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CONVEYANCER'S NOTEBOOK

ADMINISTRATION "SCALE" COSTS

Solicitors have often pressed for a scale of fees to govern the administration of estates of deceased persons. Owing to the manner in which solicitors' costs are prescribed it would not be easy for the Law Society to obtain the authorisation of a scale. The new Schedule II is flexible and it would be a mistake to give up this hard-won flexibility. The Council of the Law Society (October *Gazette*, p. 681) have, however, adopted an approach which appears to be ideal. They have recommended a scale having regard only to the size of the estate, one of the seven factors to be considered under Schedule II.

No recommendations are made for small estates (under £2,000) or for very large estates (over £100,000). The scale is as follows:

Gross Estate (*not including aggregable property*)	
From £2,000 to £5,000	2 per cent. on gross value.
From £5,001 to £20,000	2 per cent. on the first £5,000 and 1½ per cent. on the remainder.
From £20,001 to £100,000	2 per cent. on the first £5,000, 1½ per cent. on the next £15,000 and 1 per cent. on the remainder.

The Council, in a full note on the scale, point out that it is a guide only. There may be cases involving special complexity, unusual work or other difficulty. For example, an estate of only £20,000 may involve considerable extra work because the assets are widely spread and of considerable variety; a grant may have to be resealed in one or more other countries or special foreign

grants obtained; the main asset may consist of shares in a family company, involving prolonged and complex negotiations with the Revenue and difficulty in disposing of them to advantage; and so on: in such cases more than the scale may be justified. Conversely, a large estate may consist of a small number of holdings in public companies, all quoted on the London Stock Exchange, and all easily saleable, where something less than the scale is justified.

The scale appears to be entirely reasonable. The Council of the Law Society, a body of practitioners who give up a considerable part of their time for the good of the profession, get little praise for their work and a good deal of criticism. We think that many solicitors will agree with us that there can be no doubt that the Council deserves the highest praise for this careful and thorough guide, which should save considerable trouble, bring about a greater measure of uniformity and avoid unnecessary friction. The note in the *Gazette* should be studied carefully by all solicitors.

Building Society Notices

Whether the notices served under the Building Societies Act, 1939, really serve any useful purpose is largely a matter of opinion, but at any rate a borrower can hardly allege with any fairness that he did not know that he was not entitled to rely on the society's surveyor's report—he will rely on it anyway—or that there was a continuing arrangement. The Building Society (Amendment) Rules, 1939 (S.I. 1597), which came into operation on November 1, revise the form of notice to be given to a prospective borrower where the society proposes to take security from a third party.

Streamlining Purchases

During the summer, the secretary of a well-known building society started a correspondence in *The Times* suggesting that there is today far too much delay over purchasing houses. "In 1938," he says, "even in Greater London, you could exchange contracts and complete in a month. Why should it take three months in simple cases now?" He would like to speed up the whole business: he suggests that as soon as the house is put in the market, the vendor should instruct his solicitor who would get out the draft contract, make the local searches and additional inquiries and have his answers ready to the usual preliminary inquiries. On the purchaser's coming forward, he should receive all these without delay and tell the vendor of his plans for finance and so on, the vendor reciprocating by saying what his own plans, *e.g.*, for buying another house, are. The correspondent does not think the expedited contract procedure is of much value.

We regret that we must join issue, not only on the suggested procedure, but also on the premises. If our memory serves us, in 1938 the normal period between contract and completion was four weeks, the same as today, and the period between instructions and contract about two weeks as against three or four today. So far as our experience goes, withdrawals before contract, save on the ground of surveyor's adverse reports, are the exception, and we doubt whether any scheme will prevent improper withdrawals. It is to the credit of the profession that, even when the housing shortage was at its height, solicitors discouraged their clients from rushing into purchases without proper inquiries. Is eight weeks from offer to completion too long as an average?

We are inclined to agree that the expedited contract procedure is not often suitable. It presupposes that the purchaser is not concerned with the answers of the additional inquiries. In most cases, the survey, searches, preliminary inquiries and application to the building society go forward simultaneously, and it is doubtful whether all the delay can be attributed to the searches. It is well known that it is the additional inquiries that take the time, but even then two weeks is normally sufficient.

Is there really going to be any gain by the vendor's solicitors getting out a contract in blank and making searches long before any purchaser is on the horizon? Is it not expecting too much of human nature to expect a solicitor, who is probably up to his eyes in work, to prepare for a sale to a non-existent purchaser? And is not the vendor going to look with rather a jaundiced eye at a bill for work done on a sale to a purchaser who never even got as far as an offer? A writer in the Law Society's *Gazette* lately was deploring the modern demand for more and more rush. We agree with him.

A correspondent tells us of a recent purchase of a dwelling-house for £14,000. The vendor was a solicitor and he told the purchaser's solicitors that the purchaser must sign a contract within two days of the draft being submitted or the purchase was off. The purchaser's solicitors remonstrated, saying that this attitude was particularly objectionable coming from a solicitor-vendor, to which his firm disarmingly replied: "Regarding your comments, we quite agree that it is unreasonable to expect a purchaser to exchange contracts within a few days, but many purchasers are willing to do this, and in some cases it is the only way of obtaining a house. The writer [the vendor], in fact, did it himself the other day!"

If the vendor and the purchaser both want special expedition, no doubt they can have it—provided they are willing to pay an expedition fee. A final word: if the vendor really wants to sell his

property and tie down the purchaser, he can always sell it by auction. Having tied him down, let him then try to insist on completion on the contractual date.

The Landlord and Tenant Act, 1954, and Subtenancies

The most difficult problems under the Landlord and Tenant Act, 1954, arise out of subtenancies. Let us take the case of a lease by A, the freeholder, to B for twenty-one years expiring June 24, 1960, and a yearly subtenancy of part by B to C determinable on June 24. Let us suppose A is willing to grant a new lease to B and B is willing to continue the subtenancy at an appropriate increased rent. A serves his notice to terminate on B. He cannot serve one on C until he has served his notice on B. If B negotiates a new lease, say next February, can he get a higher rent from C from next June 24? We doubt it.

If negotiations between B and A break down, so that B goes out on June 24, what are A's and C's positions? A may not be able to relet to the best advantage, because of C's staying on. If A had served a notice on C just after serving one on B, did he say he would oppose a grant of a new tenancy to C?

The permutations and combinations are such as to strike terror in the heart of a football pools addict. We asked Mr. R. E. Poole to write an article on the subject (*post*, p. 458). We feel sure that our readers will find the article stimulating, even if they differ from the author's views. As this Parliament will not, apparently, be dealing with the Rent Acts, perhaps it could find time to deal with the defects in the 1954 Act. In our example A needs power to serve notices on B and C at the same time, the notice on C being in the alternative: if B takes up a new lease, the notices will cease to be effective; if B does not take up a lease, A objects to a lease to C of part of the premises comprised in the headlease (or as the case may be). Equally, B needs power to serve a notice on C that he will not object to a new sublease to C after he has got his lease from A.

Forged Documents

Conveyancers do not often have to venture into the criminal world, but occasionally they do come across documents which are forged or alleged to be. It was only just before the war that a mortgagor alleged she had not executed her mortgage to the building society and the witness admitted he was not present when she signed. And in *Uxbridge Permanent Building Society* v. *Pickard* [1939] 2 K.B. 248, a whole set of title deeds was forged. There have been other cases since the war and even the Land Registry has acted on forged documents. Precautions against forgery in the

average solicitor's office are elementary. Alterations are, as often as not, not initialled and alterations after erasures rarely so, even in wills. All too often drafts are not completed, an invaluable precaution against subsequent forgery.

By permission of the editors of the *Criminal Law Review* we are reprinting an article by the Director of the Home Office Forensic Science Laboratory, Cardiff, on the Preparation of Important Documents (*post*, p. 429), which first appeared in the June issue of the *Review*. If the precautions there suggested cannot be adopted in full, the publication will have served a useful purpose if only it helps to raise the standard of preparation and execution of documents to pre-war standards; even if none of the precautions are taken, we think our readers will find the article of fascinating interest.

Corrigendum

In clause 2 (b) of Form 17 published in the September/October issue, the words "any of" where they appear between the words "with" and "the commentaries" should be deleted.

THE FINANCE ACT, 1959

By David R. Stanford, m.a., ll.b., Barrister-at-Law

As a change from previous Finance Acts it is delightful to report that this year's Act is almost entirely beneficial in relieving some of the enormous weight from the taxpayer's shoulders. Such " devices for avoidance " as are dealt with by the legislature are some of those which existed and not merely hares such as were crushed so inaccurately by last year's Act. Perhaps the marginal note to section 1 (1), *i.e.*, " beer," set the friendly tone of this Act.

Income Tax and Surtax

The principal change in the Act is, of course, the reduction of the standard rate (*a*) to 7s. 9d., a trend which we trust will be continued and not be reversed, even if we have not the questionable joy of a Government pledged to keep it down to that figure ! This reduction brings with it a consequential change in " the appropriate fraction " to be applied to the tax-free annuity payable under a provision which was made prior to the outbreak of the last war. Prior to September 3, 1939, provision was often made for the payment of an annuity of a stated amount free of income tax without the person making the provision having reason to suspect the fantastic rise in the rates of war and post-war taxation. In consequence, to protect the unfortunate person or estate thus being bound to pay an income far in excess of what was the intended bounty, the stated amount is reduced by the appropriate fraction (*b*), thus bringing about the general result of making the effective payment free of tax up to 5s. 6d. in the £ but no further. Whereas the appropriate fraction has hitherto been worked out by a formula based upon sixpenny changes in the standard rate, in an attempt to keep arithmetic relatively simple a new formula is based upon threepenny changes. The numerator of the fraction is to be fifty-eight decreased by one for every complete threepence in the £, by which the standard rate exceeds 5s. 6d., and the denominator is to be fifty-eight. For the year 1959/60 (*c*) the appropriate fraction would thus be forty-nine fifty-eighths. Apparently the change of formula only affects 1959/60 and thus will need to be re-enacted if the odd 3d. in the £ stays next year. Is this, perhaps, a hint of further reduction (or increase) ?

(*a*) s. 17 (1).
(*b*) Defined in Income Tax Act, 1952, s. 486 (5).
(*c*) s. 17 (2).

Surtax rates for 1958/59 and 1959/60 remain unchanged from 1957/58 and remain applicable to individuals whose total income exceeds £2,000 (*d*).

Reduced rate relief based on the Income Tax Act, 1952, s. 220, much amended, now works out so that on the first £60 of taxable income the rate is 1s. 9d., on the next £150 the rate is 4s. 3d. and on the next £150 the rate is 6s. 3d. Thus, the first £360 of taxable income still gains relief from the full burden of standard rate, the overall saving being at the most £55 10s. The amendments to the section still cause relief to be allowed as a deduction from the standard rate and not as the imposition of a special standard rate for low income and is expressed (*e*) therefore as deductions of 6s., 3s. 6d. and 1s. 6d. respectively for the three income brackets.

Old age relief, always available to a taxpayer who or whose wife living with him is over 65 and whose total income does not exceed £800, is extended by section 211 (3) of the Income Tax Act, 1952, by way of marginal relief to those who would qualify but whose income exceeds £800. The marginal relief is worked out in the usual way by reducing the tax of such person to the tax that he would have paid had his income been £800 plus a percentage of his excess income. This percentage, previously three-fifths (*f*), is now to be eleven-twentieths (*g*).

The marginal provision on the relief available generally to persons with incomes less than £300 under the Finance Act, 1952, s. 15, which applied if the income did not exceed £400, has also been altered. The margin now includes income up to £405 and the fraction to be applied to the excess over £300 is now two-fifths (*h*) as against the previous nine-twentieths.

One further marginal provision is changed, namely on the relief granted by the Finance Act, 1957, s. 13, to the person over 65, or whose wife living with him is over 65. Exemption is given if the total income is less than £275 or, in the case of a married man whose wife is either living with him or is wholly maintained by him, is less than £440. The total exemption up to these sums is extended by marginal relief on income excessive to these figures by £55 or less by a maximum tax liability of a percentage of the excess. That percentage is now to be nine-twentieths (*i*) whereas previously it was one-half.

Dependent relative relief (*k*) has hitherto only extended to the case where the person supported was a relative of the taxpayer,

(*d*) ss. 17 (1) and 18.
(*e*) s. 19 (2).
(*f*) Finance Act, 1955, s. 2 (4).
(*g*) s. 19 (3).
(*h*) s. 19 (4).
(*i*) s. 19 (5).
(*k*) Income Tax Act, 1952, s. 216.

or of his wife, who was incapacitated, or was his or his wife's widowed mother whether incapacitated or not. This is now extended to cases where the mother is alone not only through widowhood but by reason of living apart from her husband or, being a single woman, in consequence of dissolution or annulment of her marriage (*l*).

Investment allowances

The necessity of reference to other Acts to trace the meaning of amendments to personal reliefs and allowances is a minor task compared with the complexity of attempting to unravel the incredible legislation by reference which is found in the much amended realm of capital allowances. Investment allowances, introduced in 1954 and ousted again in 1956 save for certain purposes such as the provision of insulation and plant designed for fuel economy, are reintroduced by the revival of the 1954 legislation (*m*). The rates are again 10 per cent. for industrial buildings or structures, farm and forestry buildings and works and 20 per cent. for new machinery and plant, the original proviso excluding private cars still being operative. Initial allowances, originally ousted by the investment allowances where applicable, will now be given in addition to the latter, but the rates will be reduced by two-thirds in the case of industrial buildings or structures, machinery and plant and by one-half in the case of the construction of mining works (*n*). Thus, the rate of initial allowance will be 5 per cent. for industrial buildings and 10 per cent. for plant (*o*). The initial allowance will continue unchanged on private cars, which are not and never have been affected by investment allowances. Certain modifications to the capital allowance provisions, consequent upon the dual allowance being permitted, are set out in the Fourth Schedule. Amendments are also made in the special case of capital allowances for expenditure on dredging and the provision of ships (*p*).

Overseas trade corporations

Provisions further to discourage bond washing and dividend stripping are found in sections 23 and 26 and a minor amendment to the overseas trade corporation legislation, which may be of interest to some readers, is found in section 27. A company cannot be an overseas trade corporation unless certain stringent qualifications are satisfied and the Commissioners of Inland Revenue have

(*l*) s. 20.
(*m*) Finance Act, 1954, s. 16; Finance Act, 1959, s. 21 (1).
(*n*) s. 21 (2). No option to elect for an initial allowance as against an investment allowance is given in the case of mining works: s. 21 (3).
(*o*) Finance Act, 1958, s. 15.
(*p*) s. 21 (4) and Fifth Schedule (dredging) and s. 22 (ships).

in general no discretion with regard to determining whether or not a company qualifies. However, by section 30 (2) of the Finance Act, 1957, the Commissioners have power to disregard an absence of qualification brought about by reason only of some act done by the company inadvertently when no material advantage was obtained by the company from its act. As a holding company with a resident subsidiary can only be an overseas trade corporation if the subsidiary is an overseas trade corporation, the status of the holding company may well be affected by the acts of such subsidiary. In this case, the discretion of the Commissioners is extended now, when considering the status of the holding company, to ignoring the consequences of acts done by the subsidiary company of which the holding company had no previous knowledge and from which it obtained no material advantage.

Stamp Duty

Hitherto there has been considerable difference between various types of insurances so far as stamp duty is concerned. Now, however, all policies of insurance other than life assurance, are to bear a duty of 6d. whether the policy be under hand or under seal (*q*). Further, no policy is to be liable to the duty of 6d. more than once and certain documents are to be exempt entirely from duty (*r*). Of these latter exemptions, the most interesting is probably that exempting instruments embodying alterations of the terms or conditions of any policy other than life assurance.

Section 31 sets a new upper limit for stamp duty chargeable under the head " Conveyance or Transfer on Sale " in the First Schedule to the Stamp Act, 1891, where the consideration is minute. If the amount or value of the consideration is less than £5 duty chargeable is not to exceed 6d. for every 25s. or part of 25s. of the consideration.

Profits Tax

Paragraph 11 of the Fourth Schedule to the Finance Act, 1937, imposes an upper limit on the deduction which might be made from a director-controlled company's profit in respect of the amount of remuneration paid to its directors. The paragraph has been amended at various times and was finally replaced by the Finance Act, 1952, s. 34. The limit imposed is a maximum deduction, and not the actual deduction, and hence remuneration less than the limit is wholly deductible but no further sum.

The limit imposed is a sliding scale, but the maximum the limit reaches is that the deduction in respect of remuneration of directors

(*q*) s. 30.
(*r*) s. 30 (2).

other than whole-time service directors shall not exceed £15,000. A whole-time service director for this purpose is one required to devote substantially the whole of his time to the service of the company and whose interest in the shares of the company is not more than 5 per cent. This upper limit remains unchanged. The lower end of the limit, which was £2,500 (up to which sum all remuneration was allowable) has now been raised to £3,000 (*s*). Between the two bounds of the limits, *i.e.*, £3,000 and £15,000, the actual limit of deduction is a variable figure depending upon how many working directors there are, namely whole-time service directors with too large a shareholding to remain such. If there are two such directors, the limit is raised from £4,000 to £5,000; if there are three such directors, the limit is raised from £5,500 to £7,000 and where there are four or more such directors, the limit is now stepped up from £7,000 to £9,000.

Where there is considerable inequality between the payment of the various working directors, a further factor in ascertaining the relevant limit has to be taken into account. The limit imposed by reference to the number of directors is not allowed to exceed the aggregate adjusted remuneration of all the working directors. The adjustment which is to be applied is that the highest paid director must be treated as not receiving remuneration in excess of £3,000 (previously £2,500) and the remuneration of each other director as not exceeding £2,000 (previously £1,500) (*t*), save that if the actual remuneration of the highest paid is less than £3,000, the deficiency may be added to the £2,000 of the other directors.

These increased limits apply to chargeable accounting periods ending after the beginning of April, 1959. In the case of a period beginning before April, the maximum deduction allowed in respect of the remuneration of directors other than whole-time service directors will be ascertained by splitting the period into the part before and the part after the beginning of April and taking the requisite proportion of the deductions in force during the respective periods (*u*).

Estate Duty

A glaring anomaly in the estate duty law was brought to light in *Re Hodge's Policy* (*w*), which anomaly was partially dealt with last year (for some unknown reason) by means of an extra-statutory concession, the effect of which was to leave the law as previously

(*s*) s. 33 (1).
(*t*) Finance Act, 1937, Sched. IV. para. 11 (2) proviso, and the Finance Act, 1959, s. 33 (1).
(*u*) s. 33 (2).
(*w*) [1958] Ch. 239.

but to allow relief to be given in such cases as the Revenue considered to be within the terms of a parliamentary statement. In *Re Hodge* a gift had been made completely, without any benefit reserved, at least twelve years prior to the death. Unfortunately for the donee, the gift had been of a policy of assurance, and in consequence, the deceased donor having paid all the premiums, the policy moneys were dutiable upon the death despite the long possession of the donee. The law on the subject and the patch applied last year by the concession have now been radically altered by section 34 of this year's Act, which can only be described as a complex section dealing tortuously with a relatively simple situation.

Subsection (1) repeals the duty in respect of a policy kept up by the deceased in favour of a nominee or assignee imposed by section 11 of the Customs and Inland Revenue Act, 1889, as applied by the Finance Act, 1894, s. 2 (1) (c), and also the associated section 76 of the Finance Act, 1948, where policies were kept up or effected under settlements. The new section, which is to be construed as one with Part I of the Finance Act, 1894, and has effect in the case of any person dying after April 7, 1959, then imposes a new charge on certain policies provided by way of gift. Under subsection (2) where a person pays a premium under a policy of assurance on his life by way of gift, a charge to duty is imposed by reference to that gift. This gives rise to no difficulty. However, the charge does not arise if the payment falls to be treated for estate duty purposes both as a gift and as one of money otherwise than under this section. Different treatment will therefore prevail for estate duty purposes if a premium is paid direct to an insurance company on a policy of insurance held for another from the case where a gift of cash is made to the donee with which he can satisfy the premium himself. Further, the payment must operate to keep up the policy for the benefit of another person who is throughout referred to as the donee. It will be remembered that the payment of the premium on a single premium policy is not the keeping up of a policy, but the establishment of that policy (*x*). These circumstances all being satisfied, then for estate duty purposes the payment of the premium is to be treated as a gift to the donee of "rights under the policy." For ascertaining the value of the property comprised in the gift for duty purposes, it will be treated as standing at the payer's death (whether or not the policy continues on foot until that time) at a value equal to the proportion of the value of the policy which the amount of the premium bears to the aggregate amount of all "relevant

(*x*) *Barclays Bank* v. *I. R. C.* [1944] A.C. 372.

premiums." The "relevant premiums" for this purpose in the usual case will be all the premiums, but if the policy has been subsequently dealt with, the premiums paid prior to that dealing will normally be those to be considered (*y*). The value of the policy will be the value as at the death of the benefits receivable under the policy on the death or in such other event on which they are receivable, provided that no dealing with the policy has taken place subsequent to the payment of the premium altering the beneficial interest therein or by way of surrender. In this latter case, the value will be ascertained by reference to the first of the subsequent dealings and will be the consideration received on that dealing, or the market value of the policy at the time of the dealing. The market value at the time of the dealing will also be taken if the consideration received was less than such market value.

Under subsection (3) if there is a dealing with a policy of life assurance in such manner as to give rise to a charge to duty under the Finance Act, 1894, s. 2 (1) (c), on the death of the assured, the property deemed to have passed under that paragraph will be treated as having a value equal to the proportion of the value of the policy which the aggregate amount of all premiums paid under the policy *before* the dealing with the policy bears to the aggregate amount of all relevant premiums. Relevant premiums and the value of the policy again have meanings as set out above. These special provisions for the valuation of the benefit displace section 38 of the Finance Act, 1957, in this case (*z*). It would appear that in the case of gifts chargeable under the new section, the normal exemptions for small gifts apply. These are the gifts of less than £100 (*a*), of less than £500 (*b*) and those within the normal and reasonable expenditure of the deceased (*c*). For the purpose of the exemption of gifts not exceeding a specified amount, a special means of valuation is laid down by subsection (6). Thus, if the gift is of a premium the value is to be taken as the proportion of the market value of the policy at the date of the gift which the amount of the premium bears to the aggregate amount of the premium and all premiums *previously* paid under the policy. It is immaterial for this purpose who paid the previous premiums. If the gift is of a policy its value is to be taken as the market value of the policy at the date of the gift.

Section 34 has done nothing to clarify the law relating to the aggregation of policy moneys with the remainder of the deceased's

(*y*) s. 34 (5).
(*z*) s. 34 (7).
(*a*) Finance (1909–10) Act, 1910, s. 59 (2).
(*b*) Finance Act, 1949, s. 33.
(*c*) Finance (1909–10) Act, 1910, s. 59 (2).

estate. The use of policies of assurance for making gifts has been wide in view of the advantageous procedure under the Married Women's Property Act, 1882, whereby an enforceable benefit can be given to a donee whilst policy moneys remain non-aggregable. Under the new section, whilst it would appear that the donor would clearly have had an interest in the premium paid, the gift is to be treated as of rights under the policy. In fact, the donor will never have been interested in the rights under the policy and it would not seem that the fact that he is deemed to have made a gift of those rights would cause him to be treated as having had an interest in those rights (*d*). Thus, freedom from aggregation would seem to follow, although until the section has been construed by the courts such freedom cannot be regarded as wholly certain. It is unfortunate that the point was not clarified by a simple subsection, as aggregation may make an enormous difference in the rate of duty payable on a small policy.

Section 35, the last with which we are concerned, partially extends and partially limits the law relating to gifts and the estate duty liability thereon. If a gift is made outside the statutory period, normally five years, nevertheless the gift remains dutiable unless bona fide possession and enjoyment has "been assumed by the donee immediately upon the gift and thenceforward retained to the entire exclusion of the donor or of any benefit to him by contract or otherwise." Recently, in *Chick* v. *Commissioner of Stamp Duties for New South Wales* (*e*), a singularly harsh interpretation of a similarly worded enactment in force in that country threw doubt upon the extent of the meaning of the words in the United Kingdom statute. There the enjoyment retained by the deceased donor was so retained for full consideration and yet nevertheless the gift was held to be still dutiable. The position has been clarified by section 35 (2) which enacts that in the case of property being an interest in land or being chattels, retention or assumption by the donor of actual occupation of the land or actual enjoyment of an incorporeal right over the land or actual possession of the chattels, is to be disregarded if for full consideration in money or money's worth. Unfortunately, the subsection finishes at this point and does not give any explanation of what will be considered full consideration in money or money's worth. This is liable to give rise to a singularly difficult situation where some form of lease or licence is taken. Although the Schedule A value is for many purposes considered full consideration, it is clearly less than the market value

(*d*) *Cf. Potter* v. *I. R. C.* [1958] T.R. 55.
(*e*) [1958] 3 W.L.R. 93.

on most occasions. To be sure that occupation of land resumed by a donor is for full consideration, the market value should be paid.

Having reversed *Chick's* case in so far as it applied in the United Kingdom (if it applied at all) the legislature strengthened the hand of the Revenue in dealing with benefits taken by the donor by roundabout methods. Although it is clear that the benefit by contract or otherwise need not have been out of the property given in order to keep alive the liability to estate duty (*f*), certain benefits escaped notice unless there was clear evidence that they were referable to the gift. Now, by section 35 (3), a benefit to the donor by contract or otherwise is to include a benefit which he obtained by virtue of any associated operations of which the gift is one. Associated operations for this purpose is defined by reference to the definition in section 59 of the Finance Act, 1940. This definition is wider than that used for the purposes of the Income Tax Act, 1952, s. 412, and is in two parts, the first covering operations which affect the same property or representative property, and the second, operations effected with reference to one another or where one has been effected with a view to enabling the other or others to be effected or facilitated. Operation appears to indicate some form of human agency or will and death is not such an operation (*g*). It should be noted that the order of operations is immaterial, although the definition is wide enough to include in the ultimate almost any two operations which happen. The rough rule for detecting the association would appear to be that either both operations affect the same thing or that the two operations were part of some common plan. The principle that for the purpose of any gift property retained is not a benefit reserved (*h*) is not altered by the new section. Finally, it will be noted that section 35 applies to dispositions caught by section 43 of the Finance Act, 1940, as it does to gifts within the 1894 Act.

(*f*) *Att.-Gen.* v. *Worrall* [1895] 1 Q.B. 99.
(*g*) *Bembridge* v. *I. R. C.* [1954] 1 W.L.R. 1461, 1464.
(*h*) *Munro* v. *Commissioner of Stamp Duties for New South Wales* [1934] A.C. 61.

RE PILKINGTON'S WILL TRUSTS: A COMMENT

By D. W. M. Waters, Barrister-at-Law

Writing in this journal (*a*) shortly after Upjohn J.'s decision in *Re Wills' Will Trusts* (*b*), the present writer committed himself to the hope that the courts would give full rein to the creation of sub-trusts under a power of advancement. In particular, it was felt that the principle of *delegatus non potest delegare* should not be permitted to impede the formation under a power to "benefit" of trusts whose terms might be most beneficial to the beneficiary. Such an impediment seemed likely after *Re Wills*.

Recently, however, Danckwerts J. was called upon in *Re Pilkington's Will Trusts* (*c*) to consider this same question, and, admitting himself to be "puzzled" (*d*) by Upjohn J.'s argument, his lordship came to a conclusion which enables sub-trusts to contain any terms provided benefit does accrue to the beneficiary. In this way the suspected impediment seems to have disappeared, and herein lies the importance of the case.

The relevant facts were these. In 1934 a testator settled a trust fund upon Q for life and after his death for such children or issue of Q and in such manner as Q should by deed or will appoint. In default of appointment the fund was to be shared equally by Q's children. The settlement contained by implication the power of advancement under section 32 of the Trustee Act, 1925, and in 1959 in exercise of this power the trustees were anxious to settle part of the trust fund upon R, the two-year-old daughter of Q. The new settlement gave to R on her attaining the age of thirty an absolute interest, and, if she should die under that age leaving a child or children who attained the age of twenty-one, such child or children would take the fund absolutely and equally if more than one. Subject to these trusts, the fund was to be held in trust equally for all of Q's children (other than R) who being male attained the age of twenty-one or being female attained that age or married. The settlement contained the statutory powers of maintenance and advancement. A summons was taken out to determine whether with Q's consent the power of advancement under the 1934 settlement could be exercised in this way, that

(*a*) (1959) 23 Conv.(N.S.) 27.
(*b*) [1959] Ch. 1.
(*c*) [1959] 3 W.L.R. 116.
(*d*) *Ibid.*, at p. 122.

is, whether the new settlement would infringe the perpetuity rule, or whether by reason of the power of advancement in the new settlement it would constitute a delegation.

(a) Perpetuity Rule

His lordship's view was simple and emphatic. "I think it is a correct argument that the power of advancement is not the same as the power of appointment. It is plain on principle that, when a power of advancement is exercised, the fund is taken right out of the trust estate and devoted to the benefit of some person who holds it clear of the limiting trust of the settlement under which the power of advancement is exercised. It is different in this respect from a limited power of appointment, which is merely a power to mark out the trusts of the settlement or will . . . so that a trust which is appointed by somebody else is read into the settlement or will" (*e*). It follows from this that the limited appointor is merely a delegate for the settlor or testator, and that his acts merely complete, as it were, another's design. On the other hand, as the learned judge suggests, two stages are involved when a power of advancement is exercised. First, the actual exercise of the power, "something which [takes] the money so advanced out of the settlement," and, secondly, a resultant handing over of the money to the object or a resultant resettlement. Such a resettlement has nothing to do with the original settlement; it is "created as a result of the exercise of the power of advancement and nothing else" (*f*).

The first conclusion to which Danckwerts J. therefore came was that, as far as the new settlement is concerned, the perpetuity period runs not from the time of the creation of the power of advancement in the original settlement, but from its exercise (*g*). It would appear that this is the first time this question has been raised in the courts. Prior to *Re Pilkington* it had been thought (*h*) that the similarity of the limited power of appointment and the power of advancement suggested that time ran from the time of creation of the power, and, even in those quarters where the *Re Pilkington* analysis had been presupposed, it was difficult to imagine that the courts would accept such an analysis. In *Re Pilkington* circumstances acceptance would involve the provision of a method

(*e*) *Ibid.*, at p. 120.

(*f*) *Ibid.*, at pp. 120, 121. An exercise would not be objectionable if it took "the form of providing benefits for the objects of the power," and those benefits "are coupled with a settlement of the moneys so raised."

(*g*) This presumes that the exercise of the power and the setting up of the resettlement take place on the same occasion.

(*h*) (1959) 23 Conv.(N.S.) 27, at p. 38, note (*p*).

of evading the perpetuity rule (*i*). Unfortunately, this last point was not discussed in *Re Pilkington*, though the case is clear authority for the proposition that, even in these circumstances, time runs from the exercise of the power of advancement.

(b) Delegation

But his lordship went further. "If I am right in the view which I have taken that a power of advancement is essentially different from a power of appointment, that also seems to me to dispose of the point about delegation" (*k*). And on this basis the resettlement was approved by the court.

It will be seen, therefore, that the crux of this decision hangs on the distinction here drawn between the two powers. *Re Pilkington* looks at the two powers from the point of view of the property affected, and the nature of the operation in its effect on the original settlement. Under the limited power of appointment the property remains subject to the original trust, while under the power of advancement it is released from that trust. On the other hand *Re Wills* observes the similarity of the two powers in that they are both dispositive discretions. It was Upjohn J.'s view that the donee of neither power was able to exercise his power in such a way that he allowed others to perform his own task of determining who and how much among the potential beneficiaries.

The reasoning supporting Danckwerts J.'s argument is clear. There may lie in the resultant resettlement a justification for exercise of the power of advancement, but this does not make the actual exercise more than an act to release property from the original settlement. "Benefit" may ensue from the release, for example, the saving of estate duty, and an additional, or even sole,

(*i*) See Morris and Leach, *The Rule against Perpetuities* (1956), pp. 141, 142. This would arise, as the authors explain, if the beneficiary is an infant (as in *Re Pilkington*), or if he is unaware of the advance until after it is accomplished. In *Re Pilkington* the resettlement did provide for absolute vesting, but Morris and Leach point out that in the above two cases serious avoidance of the rule would result if each resettlement ensured that there was no absolute owner at any stage.

(*k*) [1959] 3 W.L.R. 116, at p. 121. In *Re Gossett's Settlement* (1854) 19 Beav. 529, the question was whether a payment to an object was to be interpreted as an advance or an appointment; if it was an advance, the sum had to be brought into hotchpot. In the course of his judgment (at p. 535) Romilly M.R. said, "Now, an advancement has a definite meaning, distinct from an appointment. It means that a certain portion is actually taken out of the settlement altogether, and paid over to the object of the power. But an appointment deals only with the reversion of the fund, leaving the previous life interests untouched." And in *Re Fox* [1904] 1 Ch. 480 Byrne J. followed these words in determining whether in the instant case there was an intention that sums advanced prior to appointment should be brought into account. These cases, though not concerned with the question of the method of payment or, therefore, the sub-trust, and not mentioned by Danckwerts J., do support his lordship's analysis. It will be seen, however, that the question of delegation was not present to the minds of either Romilly M.R. or Byrne J.

benefit from release on terms, that is, that the released sum is settled in an approved manner. But both "benefits" merely justify the discretion involved prior to exercise.

It will be observed, however, that this analysis very closely circumscribes the act or acts which constitute the actual exercise. Previous courts without reported exception have clearly regarded the sub-trust, where it was employed by the trustees, as an integral part of the act of exercise of the power. In the previous article, and in treating of the validity of sub-trusts (*l*), the present writer discussed the wording of the several powers considered by the courts, and it will be seen from that discussion that previous courts have examined the manner of payment to the recipient not only in order to discover whether justification existed for exercise, but also whether the particular manner was permitted by the terminology of the particular power. In *Re Pilkington* section 32 (1) of the Trustee Act, 1925, was invoked, namely, that trustees "may . . . pay or apply . . . in such manner as they may, in their absolute discretion, think fit," and in the past this language has only been relevant because of the inquiry into whether the creation of a settlement might be a mode of exercise. That Upjohn J. in *Re Wills* saw exercise of the power as covering both release and resettlement is evidenced by his construction of "to raise . . . and to pay or apply" (*m*). Nevertheless, it is clear from Danckwerts J.'s closing words in *Re Pilkington* that he regards exercise to be restricted to taking property out of the original settlement whatever the words employed in the power of advancement. Clearly his object is to show that in any circumstances the sub-trust or resettlement, comprising, as it does, property handed over, is totally divorced from the orginal settlement. And, of course, this argument would not be affected by the fact that the sub-trust must be a manner of exercise open to the original settlement trustees, though this is more doubtful with the additional fact that advanced property remains subject to the original settlement until it vests in the sub-trustees.

With respect, however, one may suggest that to approach the question from whether property continues in or is released from the original settlement, and so to distinguish manner of payment from the release of the property involved, is to lead to an odd result. It is conceded, if the sub-trust can be explained as mere justification for release, that such a distinction allows perpetuity time to run from the creation of the sub-trust, but does it also free the trustees from the charge of delegation? Hitherto

(*l*) (1959) 23 Conv.(N.S.) 27, at pp. 28–31.
(*m*) [1959] Ch. 1, at p. 14.

the subject of delegation by trustees has been concerned solely with administrative discretions, but indisputably the trustees' duty not to delegate extends to all their discretions, and, though it has never before been decided, one imagined on principle that a dispositive discretion is nonetheless delegated if trustees alienate the property without having made the necessary creative choices of who and how much. The fact that alienation takes place when some dispositive discretions are exercised, for example, advancement and maintenance, and does not take place with others, for example, the limited power of appointment, might seem a casual distinction. It was surely for this reason that Upjohn J. considered the cases of *Re May's Settlement* (*n*) and *Re Mewburn's Settlement* (*o*) to be relevant, and determined that without further express permission an "ordinary" power of advancement in a sub-trust was as far as trustees might delegate the dispositive discretion. Danckwerts J.'s argument appears completely to outflank the duty not to delegate.

His lordship, however, was specific; "a settlement [upon objects and the children or issue of objects] (*p*) with discretionary powers, particularly if they are of a reasonable kind, is quite proper" (*q*). This statement opens up a vista of possibilities. For example, since benefit ensues from the saving of estate duty, and the discretionary trust can also assist the saving of duty, the following is conceivable. T1 and T2 have a power of advancement in favour of A, B, C or D; they exercise the power by releasing property to T3 and T4 on discretionary trusts in favour of and among A, B, C and D, together with their respective children or issue. Alternatively, T3 and T4 assume trusteeship in favour of A on protective trusts. Or again, a sub-trust is set up in favour of A and his issue with a power of appointment in A among B, C or D and their respective children or issue.

Each of these three courses might in the circumstances be eminently reasonable, and, on the basis of the *Re Pilkington* distinction, they seem legitimate. But it is evident that each course is in conflict with the apparent line of thought in *Re Wills*. In the

(*n*) [1926] Ch. 136.

(*o*) [1934] Ch. 112.

(*p*) This is also the first reported occasion upon which the court has expressed approval for the sub-trust which is in favour of children *or issue* of an object of the power of advancement. See further (1959) 23 Conv.(N.S.) 27, at p. 39, note (*r*). If, with respect, Danckwerts J.'s view on this and the main argument is correct, then children or issue of objects of the power might take absolute interests in any event.

(*q*) [1959] 3 W.L.R. 116, at p. 122.

absence, therefore, of an appeal court judgment on this matter, caution still seems the wiser course. Indeed, with Upjohn J.'s remonstrance still ringing in the ear that trustees may not create trusts merely because they feel they can do better than the settlor, the practitioner may feel that his task in this respect is not easy.

THE PREPARATION OF IMPORTANT DOCUMENTS

By Wilson R. Harrison, M.Sc., Ph.D.
Director of the Home Office Forensic Science Laboratory, Cardiff

It is sometimes said that crime does not pay; very few document examiners of any experience would readily accept this statement. Rather would they misquote the words of a very famous man "never have so many profited so much for so little as have the successful forgers of documents." A few moments of sometimes not very skilful work with an eraser or a pen—preferably a ball-point—may divert vast sums of money into the pockets of those who practise this lucrative profession.

It is impossible to make more than a rough guess at the annual harvest reaped by the forger, but a generation ago, Osborn, the famous American authority on forgery, quoted in his *Questioned Documents* a figure of between ten and thirty millions of dollars for the United States alone. Judging from his own experience, the author has little reason to doubt this figure or that a proportionate annual loss is suffered on this side of the Atlantic.

In view of this, it is strange that although many thousands of closely printed pages—and the author himself has been responsible for more than a few—have been filled with details of methods for exposing forgery, surely a case of closing the stable door after the horse has escaped, very little has been published on the steps which should and which can so easily be taken to protect important documents from the attentions of the criminally minded. Protection is stressed, for experience teaches that the alteration of a genuine document is the simplest and therefore the most commonly encountered type of forgery. The subtle modification of a genuine document will generally present far fewer problems to the forger than the fabrication of a completely spurious document, which is a task beset with many pitfalls.

It must not be forgotten that care taken in the drawing up of an important document may well be repaid in a manner far removed from mere protection from the attentions of the forger. Grave issues may hang upon the possibility of establishing a document as genuine and it is by no means unheard of for a perfectly genuine document which has been carelessly drawn up to be attacked, sometimes successfully, as fraudulent.

It sometimes happens that where but a small amount of written matter such as a single short signature is in question, the most experienced document examiner is unable to afford any real assistance in deciding whether the document is genuine or fraudulent.

Even at the time of writing the author is endeavouring to determine the authenticity of two disputed signatures on a document drawn up but a few months ago. The difficulty stems from the fact that both signatures are written on porous paper with a defective ball-point pen filled with ink which " strikes " extremely badly so that both are steadily being transformed into vague blue streaks devoid of the detailed structural details which alone will enable their authenticity to be tested.

As might be expected, documents drawn up by the parties themselves are most susceptible to attack, thus confirming the old adage that a man acting as his own lawyer has a fool for a client, but even documents drawn up by the most reputable firms of solicitors have been known to exhibit such obvious weaknesses that they have been wide open to the attentions of the forger or successfully attacked as falling short of the standards of authenticity required when the witnesses were no longer available to testify to their genuineness.

When considering how best a document may be drawn up so as to render the task of the forger as difficult as possible it may be helpful to study the way in which a genuine document can be fraudulently modified. The operations of the forger may be roughly summarised under five main headings. These are (1) Trimming of sheets, (2) Addition or subtraction of whole sheets, (3) Additions, both interlinear and marginal, (4) Erasures, (5) Substitution of names, dates, amounts, etc., over the sites of erasures together with alterations in figures.

Trimming

Trimming of the sheet is usually resorted to for the removal of both undesired clauses from agreements and of inconvenient dates; it is far safer to trim off an unwanted date and then insert a new version which may be examined in vain for evidence of alteration or erasure, than to risk making an alteration which might be revealed on laboratory examination.

Where clauses are concerned it should be borne in mind that it is not only those which appear at the top or bottom of a sheet which can be removed by judicious trimming. Any document drawn up on heavily loaded paper of poor quality will, on being subjected to rough handling, tend to split along a fold. It is not unknown for a narrow strip of paper bearing an unwanted

portion of the text to be removed from the middle of a sheet and the two remaining portions joined by stamp-edging or cellulose tape in the confident expectation that the breakage will be attributed to wear and tear with no suspicion that an essential portion of the document is no longer present.

Numbering the paragraphs or the clauses cannot be regarded as a complete protection against fraudulent trimming, for a slight paring of a left-hand margin might well suffice to remove numbers which have unwisely been placed too far from the text.

To protect an important document against fraudulent trimming, it should first be drawn up on good quality paper, preferably one with a rag base. The sheets should be of a standard size (for any document on paper of unusual dimensions is invariably regarded with suspicion by the experienced document examiner) with an ample margin remaining on the left-hand side so that any trimming sufficiently drastic to influence the text will necessitate the removal of sufficient paper to make the sheet appear abnormally narrow.

Alternatively, where the paragraphs or clauses are to be numbered, the numbers should be deeply inset so that their removal by trimming will necessitate interference with the text. Where the date is of importance it should be incorporated into the text, preferably in words rather than in figures which can so easily be altered or misread.

The reason for the use of paper of high strength may not be obvious; if this precaution is taken, any tears in the document, whether repaired or otherwise, will be regarded as, in the absence of evidence to the contrary, deliberately caused, because paper of good quality will undergo considerable maltreatment in the shape of frequent folding and unfolding without exhibiting any tendency towards splitting along the folds.

Guarding Against Substitution of Pages

The substitution or addition of pages can be best guarded against in a manner well known to those whose task it was to draw up important documents in the past. Wherever possible a single sheet of parchment or of paper was used, and to produce a document of convenient size this sheet was folded once or twice to give two or four leaves. Nowadays, when the use of a typewriter is regarded as essential, it is impracticable to follow this precept especially when carbon copies are required, so that documents may have to be assembled from a number of separate sheets.

Whenever a document is composed of more than a single sheet, care should be taken to bind the sheets together in such a manner

that it will prove impossible to separate them, an essential preliminary to fraudulent substitution or addition, without leaving abundant evidence of the operation. For such a purpose, ordinary paper clips or wire staples are useless.

Whilst it is good practice to use a machine which punches a hole and then crimps a circular brass eyelet into position in the one operation, for the highest measure of protection against the substitution of pages the brass eyelets which fasten the sheets together should be threaded with a thin ribbon or cord. The ends of this ribbon should then be secured under a seal, either wax or adhesive, on the sheet which carries the signature.

Full directions for carrying out this operation neatly and conveniently are given by Osborn in *Questioned Documents*, but for the benefit of those who cannot conveniently consult this book, these directions are quoted, by permission, in an appendix. [See also Figure 1, p. 441.]

As the presence of an odd sheet of paper in a multileaved document may at some later date draw suspicion upon it, it is a safe rule to make the document from sheets of the same type of paper, from the same packet where possible.

Wax Seals

When preparing a wax seal it is false economy to melt down and use odd scraps of wax, for where a wax seal on a document whose authenticity is being challenged can be shown to be composite it is immediately regarded with suspicion. In the absence of definite evidence to the contrary, a seal containing a mixture of waxes is regarded as almost certainly to have been tampered with and repaired.

Guarding Against Fraudulent Additions

Much can be done to prevent fraudulent additions being made to existing pages by taking precautions which, once again, are largely a matter of common sense. As a first precaution, unduly large gaps should never be left between paragraphs or at the bottom of the page no matter how pleasantly a well-spaced text may fall upon the eye. It is especially important that the signature should follow closely upon the end of the text.

Any document, whether important or not, which displays a gleaming expanse of blank paper between text and signature will present an irresistible temptation to the fraudulently minded. Whilst it is a simple matter for the forger to insert something to his advantage in the space so considerately left vacant, this is not all. The document itself may be of such small importance that it

can readily be sacrificed by trimming off the text to yield a blank sheet of paper, somewhat restricted in area it is true, but which bears a genuine signature which might well be used to advantage as the final sheet of a multileaved forgery which might well stand up to the most rigorous scrutiny.

If, by any chance, it is necessary to leave an unduly generous margin at the foot of a sheet, it is safer to sign just below the text, or if this course cannot be taken, to draw slanting lines which will prevent undesired additions. This may seem a counsel of perfection, but on one occasion the author was asked to examine a document in which but two lines of typescript had been fraudulently added at the foot of an intermediate sheet to form an additional clause in an agreement which had the effect of enhancing its value by something over four hundred thousand pounds.

Where conveniently placed margins are not available, fraudulent additions can take the form of interlineations. Whilst there is no absolute protection against such tampering, such additions are more likely to be regarded with suspicion if similar non-fraudulent interlineations are absent from other parts of the document so the moral is obvious: when drawing up a document, see that it is free from irregularities of this nature.

Additions to Typewritten Documents

In spite of the inconvenience this course may occasion it is safest to have the whole of even a lengthy document prepared on a single typewriter without the machine being used to any considerable extent in between the typing of the various sections. It is especially important to ensure that each page is typed *without removal and re-insertion into the machine*. These precautions are necessary both to protect the document from subsequent attack as being a composite, and to render apparent any fraudulent additions.

It might be thought that it is a comparatively simple matter to re-insert a typewritten document into a machine so that fraudulent additions may be unobtrusively made. Whilst a skilled typist can accomplish the re-insertion so neatly that no obvious discrepancy in alignment obtrudes itself on the notice, to defeat the test-scales used by the document examiner a most exceptional degree of skill is necessary. This means that if, after careful examination of a suspect typewritten document, an experienced document examiner is unable to demonstrate the presence of that degree of misalignment which clearly points to re-insertion, there will be little support for any thesis that any of the typescript has been fraudulently added.

Successful tampering with a properly drawn up typewritten

document is never an easy matter and the main difficulty experienced by the would-be forger is in obtaining access to a machine which is sufficiently like the original typewriter on which the document was prepared. If even a lengthy document has been typed on the one machine at a sitting, any additions, unless made on the same machine before it has received much more use, will stand out like a sore thumb. If, however, in the preparation of the document more than one machine was used, or the same machine was used at long intervals of heavy use, it might prove difficult to establish the presence of fraudulent additions. Alternatively, a genuine document not typed in accordance with the above recommendations may be successfully attacked as fraudulent in after-years when the circumstances governing its haphazard production cannot be adduced as a reasonable explanation for its apparently hybrid nature.

For the preparation of important documents a machine in a good state of repair should be used. With a worn machine the alignment of the typescript may be so variable that additions can be made with impunity or, alternatively, certain genuine portions may be successfully attacked on the ground that they are later additions.

Protection Against Erasure

In brief, erasure may be effected either by abrading the colouring matter of the ink or typescript from the surface of the paper or by applying chemical solutions which convert the colouring matter into colourless soluble materials which either soak into the paper or are removed by blotting. Although there are a variety of laboratory methods for exposing erasures, experience has shown that entries on thick matt-surfaced yellow-tinted paper can sometimes be so completely erased that no evidence of erasure can be adduced no matter how thorough the subsequent examination.

On the other hand the use of a thin, glossy-surfaced paper can be relied upon to make unobtrusive erasure by abrasion impracticable and, if the colour of the paper is a clear white, the site of a chemical erasure will be revealed by the development of a distinct yellow tinge.

Whilst non-fraudulent erasure through natural agencies such as light-fading or smudging through accidental contact with moisture may prove a serious embarrassment, there is no reason, if proper care is taken, for any important document to be susceptible to trouble from either source.

Where inks are concerned, "record ink" based on iron gallo-tannate is easily available and unblotted entries made with such

an ink can be relied upon to be resistant both to fading by light and to the action of water. Contrary to general belief, record ink is quite as suitable for use in a foutain-pen as any of the special inks sold for the purpose. If, however, the use of this rather acid ink is objected to, the modern alkaline quick-drying inks of the " Superchrome " class should prove equally reliable. Should it be thought desirable to employ a coloured ink, those of the Superchrome class which contain copper or other such metal compounds as part or whole of the colouring matter should be used if resistance to fading is required.

Ordinary fountain-pen inks, especially those described as " washable," are unsatisfactory in many respects where permanence is required. Not only do the majority of these inks fade very readily and the writing " run " when the document is wetted, but their complete removal from the paper by gentle bleaching is easily effected. Once writing with such inks has been bleached, either by the action of light or chemicals, it is rarely that it can be restored or even deciphered. On the other hand, the complete removal of writing made in unblotted record or Superchrome inks is almost impossible to accomplish.

The reasons for the warning, which cannot be too often repeated, that the ball-point pen should never be used for signing important documents are given below, but even for the drawing up of the body of the document the use of such an implement should never be contemplated. Some ball-point inks fade most rapidly with no hope of restoration, while others " strike " to such an extent that on some papers writing rapidly degenerates into indecipherable coloured streaks.

Susceptibility to rapid fading is a common fault of typescript and of carbon copy made with ordinary coloured carbon papers; to ensure a reasonable degree of permanence, special " permanent " ribbons and carbon papers which make impressions heavily loaded with carbon in addition to dyestuff should invariably be employed.

Alterations

Where an important document is concerned, mistakes should never be corrected or additions introduced by means of erasure or alteration. The only safe rule is that when an addition has to be made or some mistake corrected, the whole sheet should be retyped.

This may seem a counsel of perfection but it is indeed worth while, for if those putting forward a document which has been fraudulently altered by erasure in some important particular can

point to erasures or alterations which have been made in unimportant entries on the same sheet, this will support in some measure their contention that the fraudulent entries might very well have been made legitimately at the time of preparation.

If an alteration has to be made to a document which, in the circumstances, cannot be re-drawn in its entirety, the original entry should be struck out with a light ink-stroke and the correction inserted in the margin or in the vicinity of the cancelled entry. The alteration should also be initialled. As a further precaution, a reference to the alteration could be made and signed at the end of the document.

No attempt should be made to alter any original entry as it stands; still less should it be erased and the amended entry made on the site of the erasure.

Pencil Entries

These have no place on any important document either as a permanent feature or as a temporary marking which can be erased once it has performed its function as a place-indicator—the usual reason for the presence of pencil on a document.

Although pencil entries are affected adversely by neither water nor strong sunlight, they are easily erased, often without trace, and can become practically illegible through abrasion arising from the relative movement of the sheets when the documents are handled.

When temporary pencil marks are erased, the document becomes disfigured with an erasure which well might have the effect of seriously damaging its reputation should its authenticity ever be called into question. This applies with especial force to those pencil marks which are foolishly placed in position to indicate where a client has to sign on a document drawn up by a solicitor.

When this is done, some clients stupidly ink-in the pencilled outlines provided, without making any attempt to write their natural signature. The result is that whether the pencil line is erased or not, the "signature" has many of the hall-marks of a traced forgery. Even if a normal signature is written without any attempt to trace over the pencil marks, the presence of pencil in a disputed signature is certain to be regarded with suspicion. If the pencil marks are erased after signing, a practice favoured by many a clerk "to clean up the document before photostating" as one explained it to the author, the document will stand little chance of being accepted as genuine should its authenticity ever

be strongly challenged. Erasures invariably arouse suspicion; when they occur in the neighbourhood of a signature, doubly so.

When signing, the normal signature should always be insisted on even if it involves the use of initials instead of the full name. The majority of persons have a way of writing their signature which differs appreciably from their other handwriting. If one of this large group of persons is forced to sign a document with the full name, the signature might differ appreciably from the usual abbreviated signature.

As this is the case, wherever, for complete indentification, a document has to be signed with the full name, the ordinary signature should first be written and then followed with the full name in brackets.

Reliability of Signatures as a Means of Authenticating a Document

Anyone who relies upon a typewritten document authenticated by but a single signature may have a rude awakening; it is not unknown for a genuine signature to be disavowed. Many wealthy men are elderly and on a number of occasions the author has received for examination documents where the signatory has disclaimed all knowledge. On occasion, it has happened that while the signatory has confessed himself unable to recall putting his signature to a document, he has expressed his willingness to honour it providing a laboratory examination has failed to disclose any evidence of forgery.

In general, however, a genuine signature is disavowed when the signatory wishes to escape from the obligations he has assumed when signing. This action will put the person relying on the signature into a difficult position, for if he unsuccessfully presses his claim, he will run the risk of criminal proceedings for uttering a forgery.

It might well be thought that where a signature, particularly that of a wealthy man, is in question, a document examiner would be in a position to prove its authenticity, but this is not necessarily the case. The author has examined the signatures of many famous financiers which have been so poor in quality that he has been unable to express and justify any definite opinion as to their authenticity. Many have been totally illegible, consisting of but a carelessly made initial letter or so, followed by a short wavy line.

In view of this, anyone relying upon a signed document should bear in mind that the degree of positiveness to which the authenticity of a signature can be proved depends in large measure upon the amount and character of the handwriting. As a badly written

signature may be repudiated at will with little prospect of the victim being able to establish its genuineness in the face of a definite disavowal, certain precautions should be taken before accepting a signed document upon which reliance may have to be placed at a later date.

The first is to ensure that the document has been properly drawn up on a sheet of paper of standard size; tiny scraps of paper should never be accepted as it is so easy to suggest that these may have been trimmed from a document bearing a genuine signature.

Wherever possible, the whole document should be written out in the handwriting of the signatory. Whilst a signature may be disavowed on the grounds that it is a forgery, it is a rash man who asserts that a whole document has been fabricated in an exact copy of his handwriting.

If the document is to be typewritten, it should, where possible, be typed at one sitting on a typewriter in the possession of the signatory. The carbon copy should be signed by both parties. If this is done, it is difficult to sustain untrue allegations that the document was reinserted into the same machine after signing for the inclusion of fraudulent additions.

The next and perhaps the most important step is to have the signature suitably witnessed. The word "suitably" is stressed, for this will exclude persons of little repute who may be untraceable or suffer from loss of memory should the authenticity of the signature be challenged.

When signing anything but a holograph document, it is as well to have the signatory add a few words in his handwriting, such as a short statement to the effect that he is signing of his own free will in full understanding of what he is signing. This will afford a certain measure of protection, for few forgers will attempt to write a whole sentence in a copy of the handwriting of the victim. In the event of a dispute, the document examiner will have much more material on which to base his opinion.

It is well known that the handwriting of someone seriously ill may deteriorate to a considerable extent over a short period of time. This should be borne in mind by legal advisers who have to draw up wills for those who are so gravely ill that they are unable to write anything like their normal signatures. In such cases, a few lines of writing such as those suggested above may save a considerable amount of litigation. The endorsement added to the signature will not only tend to establish the genuineness of the signature but will also afford some indication of the testamentary capacity of the testator.

Protection of Signatures Against Forgery

Anyone can protect his signature from the attention of the forger by cultivating a simple rhythmic style of writing with attention being paid to correct shading of the stokes. Any garnishing of the writing with a multitude of meaningless strokes and flourishes may result in the production of what at first sight may appear to be a highly individual signature but it is likely to present the forger with few problems.

The forger can cover up the necessarily patched appearance of his work with a mass of similar flourishes, but where a simple well-shaded rhythmic signature has to be copied, it is only the most skilful penman who will have the pen control necessary to produce a convincing forgery. It is well to bear in mind that a forger is unable to make a successful copy of the signature of anyone who is a better writer than himself.

The Filing of Documents

Nothing so limits the useful life of a document as constant folding and unfolding accompanied by its being thrust into an envelope which is too tight a fit. Whenever possible, a document should be preserved unfolded between slightly over-sized sheets of cardboard and the whole protected from light and dust by an easy-fitting envelope made of cartridge paper of good quality. Preserved in this way, a document on paper of good quality should last for centuries, with any writing or typescript remaining legible to the end.

From the foregoing, it will be seen that the steps which should be taken to draw up documents which will serve their purpose and hold out little prospect of easy gains to the forger are simple and largely a matter of common sense. If the simple rules are followed, much unsatisfactory and inconclusive litigation will be saved and the annual toll taken of the community by the forger will be appreciably reduced.

Appendix

Figure 1 (p. 441)

Fold the cover paper over at the upper end leaving a flap one-half inch in width. Put the upper ends of the two or more pages of the document under the flap and punch five holes with an eyelet-setting punch, the end holes not more than one-half inch from the right and left edges and the middle two holes one-half inch apart in the middle of the sheet. The second hole from the right should be about two inches from the right side. Set eyelets in the two end holes under firm pressure. Put the ribbon through the end holes from the bottom and then the ribbon from the left side should be threaded down and up through the holes one-half inch apart. Then put both

ends of the ribbon down through the second hole from the right to the signature sheet and pull both ends out between the signature sheet and the next sheet above and with the ribbon ends drawn up tight. Pull the loose ends out to the right between the sheets and place them under an adhesive seal at the upper right-hand corner of the signature page and impress the seal while damp with heavy pressure with a seal press. Trim the loose ends of the ribbon.

Figure 3 (p. 443)

In the receipt illustrated in "A.", the signature fails to project beyond the edges of the stamp. It is not uncommon for such a stamp to be steamed off and used for fabricating a forged receipt which will thus bear a "genuine" signature:

See "B."

This trick does not always succeed for unless the forger is exceptionally skilled, traces of excess adhesive will be apparent in the neighbourhood of the perforation:

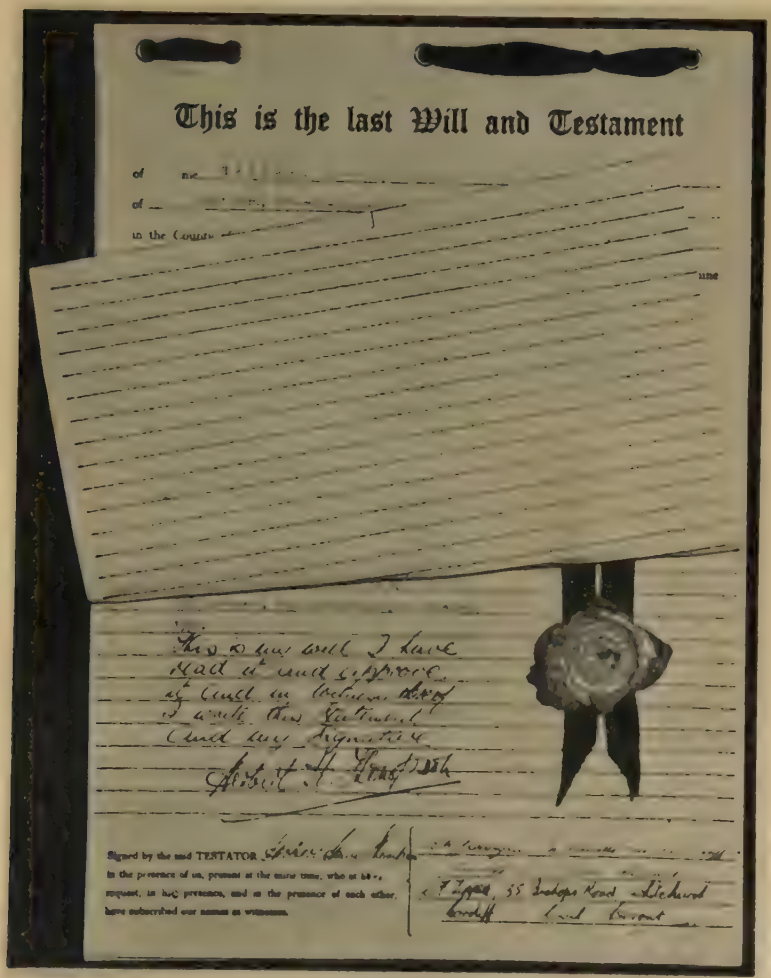
See "C."

A further pitfall for the forger is provided by the watermark on the stamp. Although the colour and design of this 2d. stamp have remained the same since its introduction on September 1, 1953, the watermark has been changed twice.

The first change, the substitution of the St. Edward's crown illustrated at "E." for that shown at "D.", took place on September 6, 1955. The second, the all-over use of the St. Edward's crown, was effected on April 12, 1958.

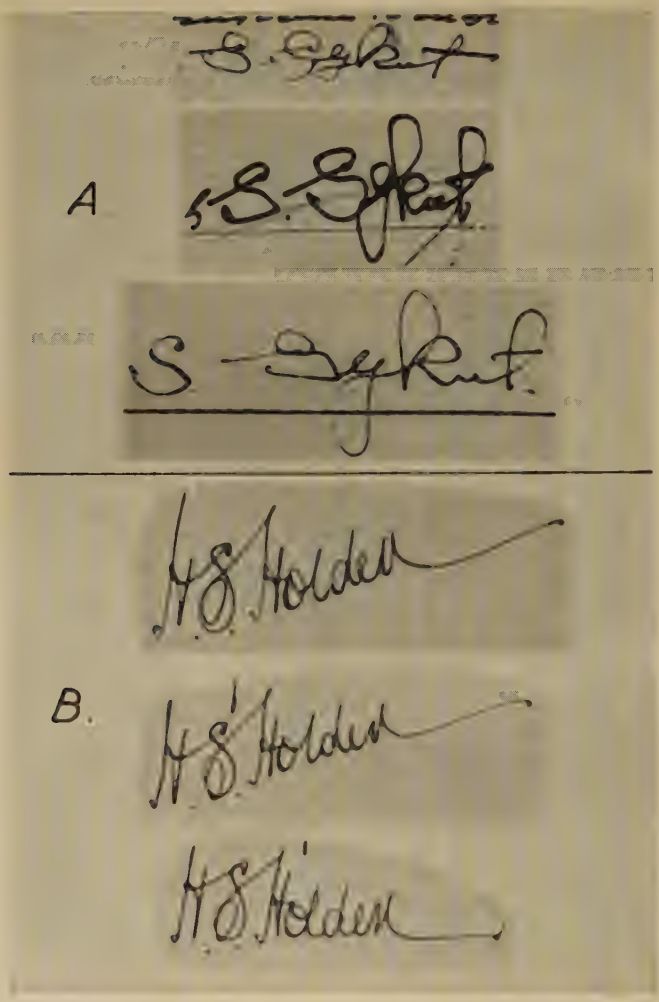
The watermark will often allow a limit of age to be given to a stamp. The stamp on receipt "A." included the St. Edward's crown in the watermark. This was fitting for this particular receipt but not for the forged receipt "B." which bears an earlier date.

Figure 1


This is the last Will and Testament
of me
of
in the County
This is our will I have
Read it and approve
of Enid in testimony thereof
I write this Testament
Enid my signature
Signed by the said TESTATOR
in the presence of us, present at the same time, who at h
request, in his presence, and in the presence of each other,
have subscribed our names as witnesses.

This illustrates the method of binding together several separate sheets of paper in such a way that substitution would be rendered very difficult. The method is described in the appendix. Note also that the signature is accompanied by a few lines in the handwriting of the testator.

Figure 2

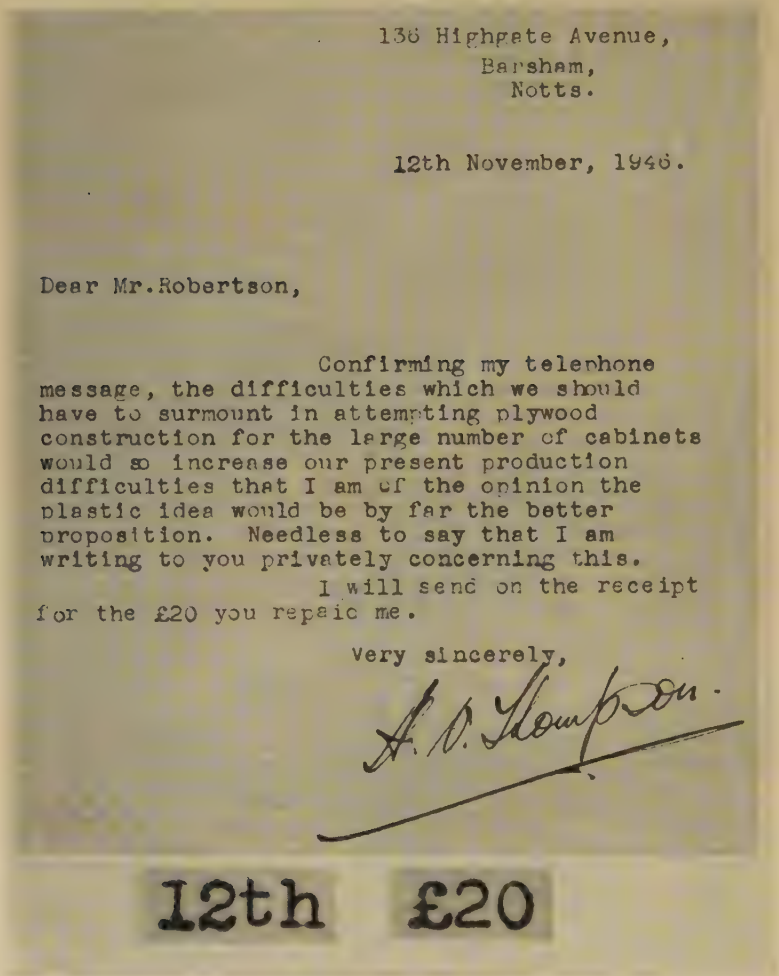


A. illustrates the three signatures of a man who was probably murdered because of the extreme variability found in examples of his genuine signature. His murderer, Onufrejczyk, thought that his forgery of Sykut's name on a number of documents would go undetected if Sykut were no longer alive to disclaim the forgeries. B. illustrates three examples of a signature it would prove extremely difficult to forge. The writing is rhythmic with excellent line quality and the signatures show little variation.

Figure 3

Received the sum of:-
£2 10s. 0d.
A.
20.10.55.
x1½
Received the sum of:-
£16 15s. 0d.
B.
5.9.55.
x1½
C.
x1½
D.
x2
E.
x2

Figure 4



136 Highgate Avenue,
Barsham,
Notts.

12th November, 1946.

Dear Mr.Robertson,

Confirming my telephone message, the difficulties which we should have to surmount in attempting plywood construction for the large number of cabinets would so increase our present production difficulties that I am of the opinion the plastic idea would be by far the better proposition. Needless to say that I am writing to you privately concerning this.

I will send on the receipt for the £20 you repaic me.

Very sincerely,

A. D. Thompson.

12th £20

This illustration shows what may happen if gaps are left in typewritten documents. The reference to the receipt of £20 has been inserted into the gap left between the words "concerning this" and "Very sincerely". A different typewriter was used for the addition. This is clearly shown by the difference in design of the 2 of 20 and the 2 in the date.

THE LAW OF HIGHWAYS

IV. Controls Over Land Adjoining a Highway *

By J. F. Garner, ll.m., Solicitor

In this article it is proposed to discuss those sections of the Highways Act, 1959, and other statutory provisions (such as the Town and Country Planning Act, 1947) which control the use that a landowner, or an occupier of land, may make of land adjoining a highway, including the sections enabling the local authority to carry out works for the making up of a private street at the expense of the frontagers. This is perhaps one of the most complicated branches of highway law, but at least the Highways Act of 1959 has simplified matters by bringing the majority of these controls within the four walls of one statute. Some controls have already been dealt with in these articles under the "nuisance" provisions (*a*), but the controls now to be considered affect in particular the landowner who wishes to develop his land adjoining a highway. We will deal first with the several "active" forms of control that may be exercised by the local authority—or by the highway authority, as the case may be—and then briefly with the private street works provisions.

1. Buildings in Streets

Section 75 of the 1959 Act (*b*), a respectable survivor of the Victorian age of "by-law streets," gives to the local authority (*c*) power to take criminal proceedings if, after a notice has been served on him by the local authority informing him of the contravention, any person erects or brings forward a building in a street (*d*) beyond the front main wall of the building on either side thereof (*e*), without the consent of the local authority (*f*); in granting

* This is the fourth article in this series; it is assumed herein that the Act of 1959 is already in force.

(*a*) *e.g.*, improvement of view at corners and bends (s. 81); prevention of soil being washed into the streets, etc. (s. 130).

(*b*) Replacing s. 3 of the Public Health (Buildings in Streets) Act, 1888.

(*c*) *i.e.*, the borough or district council.

(*d*) "Street" is defined in s. 295 (1) of the 1959 Act, but it seems that in this context there must be a succession of buildings on at least one side: *Att.-Gen.* v. *Laird* [1925] Ch. 318. The building "on either side" must not be too far away: *ibid.*

(*e*) Even on one side only: *Leyton L. B.* v. *Causton* (1893) 57 J.P. 135.

(*f*) Consent under the building by-laws does not amount to consent under this section: *Att.-Gen.* v. *Denby* [1925] Ch. 596.

consent, conditions may presumably be imposed, but no express provision is made therefor in the section. This section really applies only where development has already been commenced in the particular street, but where it does apply there are no exemptions for particular classes of buildings, as there are from planning control (*g*) or the building by-laws (*h*). The local authority do not often take any special steps to bring the effect of this section to the notice of an intending developer, but if plans are submitted under planning control and/or building by-laws, the effect of the section will normally be pointed out by the local authority's officers, in cases where it applies.

2. Building Lines

Section 73 of the Act of 1959 empowers the highway authority to prescribe in relation to one side or both of any highway maintainable at the public expense by them (whether or not it is a "street"), a frontage line for building, known as a "building line." The effect of prescribing such a line (which is registrable in Part IV of the local land charges register) is to prohibit, except with the consent of the highway authority, the erection or making nearer to the centre line of the highway than the building line so prescribed, any new building (including any addition to an existing building (*i*)) other than a boundary wall or fence, and the making of any permanent excavation below the surface of the highway. Notice must be given of the intention to prescribe such a line to every owner, occupier and lessee of land affected, and they have a right to make representations thereon to the local authority. If those representations are ignored or not met, there is, however, no right of appeal to any court of law.

Any consent given under this section for a building to be erected in front of the building line so prescribed may be granted by the highway authority for such period and subject to such conditions as they may think expedient, and any conditions so imposed are expressly made enforceable against the successors in title of the owner of the land concerned (*k*). Any person who is able to prove that his property is injuriously affected by the prescribing of a building line may, within six months, claim compensation from the local highway authority and this will be assessed, in any

(*g*) Under one or other of the classes scheduled to the General Development Order; see para. 6, below.

(*h*) *e.g.*, a small garage or poultry-house.

(*i*) See definition of "new building" in s. 73 (12).

(*k*) See s. 73 (3). The conditions should be registered in Part IV of the local land charges register.

case of dispute, by the Lands Tribunal (*l*); in assessing such compensation, any benefit accruing to the claimant by reason of any improvement made or about to be made to the highway must be taken into account (*m*), and no compensation will be payable in respect of any development commenced by the claimant after notice of the proposal to prescribe a line has been served upon him (*n*). In practice, building lines are not often newly prescribed at the present time (*o*), but there is a number of prescribed lines in existence, some of which may relate to roads which are still not fully developed, and therefore a purchaser of land should investigate the position if the existence of a building line is revealed as a result of his local land charges search.

A similar power, to prescribe a "frontage line," is given by section 74, which applies only in the special case where a building situated in a street, or the front thereof, has been taken down in order to be rebuilt or altered; this defines the line in which any building to be built or rebuilt in the same situation shall be erected. No penalty is prescribed for a contravention of the section, but presumably an injunction could be obtained to enforce its provisions; a person aggrieved may appeal to quarter sessions, and there is a provision for payment of compensation (subs. (4)).

The prescription of a building line does not have any further legal effect (*p*); it cannot have the effect of requiring the setting back of existing development (*q*) and it operates in much the same manner as the control under section 75, in advance of anticipated development (or redevelopment), but it is not confined in its operation to "streets."

3. Improvement Lines

The powers given by section 72 of the 1959 Act to prescribe an improvement line are sometimes confused with those enabling the prescription of a building line (above), although the present powers are the more important in their effects. It has been said (*r*) that "the distinction between an 'improvement line' and a 'building line,' is that the former prevents building on land which will one day be required for street widenings, whereas the latter

(*l*) 1959 Act, s. 266 (1).
(*m*) *Ibid.*, s. 266 (6).
(*n*) *Ibid.*, s. 73 (8) (b).
(*o*) Ministry of Transport and Civil Aviation Circular 696 does not in terms apply to building lines, but as the object of such a line can readily be attained through planning control, the older procedure has come to be unpopular with some local authorities: see note (*c*) below.
(*p*) Not even under the Public Utilities Street Works Act, 1950.
(*q*) This could be done only by use of planning legislation, by an order under s. 26 of the 1947 Act, in respect of which compensation would become payable.
(*r*) Pratt and McKenzie's *Law of Highways* (19th ed.), at p. 508.

fixes a frontage line beyond which buildings in a street are not permitted to project." The objectives of the two are different; the former is designed to safeguard the position for road improvements, while a building line merely safeguards the amenities of the existing street.

Under section 72, a highway authority may prescribe, in relation to either one side or both sides of a street, or at or within a distance of fifteen yards from any street corner, an "improvement line," to which the street is to be widened, in any case where a street maintainable at the public expense by them is narrow or inconvenient or is without any sufficiently regular boundary line, or where it is necessary or desirable that the street should be widened. A line so prescribed is registrable in Part IV of the local land charges register and notice of the proposal to prescribe a line must be given to every owner, lessee and occupier of land affected (*s*), and any person aggrieved by the decision to prescribe a line may appeal to quarter sessions (*t*).

The prescription of an improvement line has the following legal consequences:

(a) No new building or erection (*u*) may be placed, and no permanent excavation below the level of the street may be made, nearer to the centre line of the street than the improvement line except with the consent of the authority (*v*); this line, it will be noted, is drawn with reference not to the boundary of the street (as in the case of a building line), but with reference to the centre of the street;

(b) the land between the boundary of the street and the improvement line will be "controlled land" for the purposes of the Public Utilities Street Works Act, 1950, and statutory undertakers can therefore obtain an authorisation to place their apparatus therein, instead of in the street itself (*w*);

(c) the highway authority will have power to acquire any land not occupied by buildings, lying between the improvement line and the boundary of the street, either by agreement or compulsorily as provided for in the Lands Clauses Consolidation Acts (*x*).

(*s*) Ninth Schedule.

(*t*) 1959 Act, s. 72 (3).

(*u*) What is an "erection" in this context is a question of law, depending on whether the object is such that it would put a greater burden on the local authority if they decide eventually to acquire the land pursuant to their powers (see below): *Sittingbourne U. D. C.* v. *Lipton, Ltd.* [1931] 1 K.B. 539.

(*v*) Such consent may be granted subject to conditions; any conditions so imposed will be registrable in Part IV of the local land charges register.

(*w*) See para. (7), below.

(*x*) Act of 1959, s. 217 (1).

Any person whose property is injuriously affected by the prescribing of an improvement line is entitled to claim compensation (except in relation to buildings commenced, etc., after the plan showing the line was duly deposited (*y*) by the highway authority), to be assessed by the Lands Tribunal in case of dispute (*z*), from the local authority for the injury sustained: if his land is eventually acquired, he will be entitled to compensation in accordance with normal principles. Where land is so acquired, it must "at such time or times as the highway authority may determine," be added to and made good as part of the street, but until that has been effected the occupier of the land from which it has been severed has reasonable rights of access and to lay mains and cables, etc., in respect of that land as if it were already part of the street (*a*). The added strip cannot, therefore, be made up partly at the expense of the frontagers under the appropriate private street works code (*b*); once it is added in fact to the street, it must have the status of a highway maintainable at the public expense (*c*).

4. New Street Orders

Section 159 of the 1959 Act replaces section 30 of the Public Health Act, 1925, under which new street orders were formerly made, but the opportunity has been taken to clear up a number of practical and technical difficulties in the operation of this section. As the section now stands, it enables the "appropriate council" (*d*), where it appears to them "that an existing highway (*e*) will be converted into a new street (*f*) as a consequence of building operations which have been, or are likely to be, undertaken in the vicinity," by order to prescribe the centre line of the new street and outer lines defining the minimum width thereof (as required under

(*y*) In accordance with the Ninth Schedule to the 1959 Act.

(*z*) 1959 Act, s. 266. In determining the amount of compensation payable any benefits accruing to the claimant by reason of the improvement of the street in question must be set off against any claim: *ibid.*, s. 266 (5). The award of the Lands Tribunal may also embody an undertaking given by the highway authority with regard to the exercise of their powers under the section in relation to the property affected; any such undertaking will then be binding on and enforceable against the authority: *ibid.*

(*a*) 1959 Act, s. 217 (2); this clarifies the position under the former statutes.

(*b*) The code of 1892, the code of 1875, or any appropriate local Act (see below).

(*c*) s. 72 may be implemented only in respect of a street that is such a highway: see s. 72 (1) (a). It is not likely that many new improvement lines will be prescribed in the future. In Circular 696 of the Ministry of Transport and Civil Aviation (see [1954] J.P.L. 787) it was recommended that highway authorities, in preference to prescribing lines under the present section, should use the planning legislation to achieve the same objective.

(*d*) See s. 159 (8).

(*e*) Whether or not it is maintainable at the public expense; but it must be a *highway*.

(*f*) This expression is not defined.

the new streets by-laws (*g*)). When an order is made under this provision (and, like its predecessors made under the 1925 Act, it is registrable in the local land charges register, in Part IV thereof) it will have the following effects:

(a) no person may thereafter erect a new building (including a wall) on the land situated between the outer lines prescribed by the order; *and*

(b) when work for the erection of a new building is commenced on land adjoining that between the outer lines aforesaid, then that land will become part of the existing highway, and the owner must remove any boundary fence and bring the level into conformity with that of the existing highway.

Notice has to be given of the intention of the local authority to make an order under the section, and an appeal lies to quarter sessions at the instance of any person aggrieved (*h*). No provision is made for payment of compensation in respect of the reservation of land as the consequence of the making of an order, and the local authority are under no obligation to purchase the strip left outside a private owner's curtilage; but once building commences it is now (*i*) clear that this strip must be thrown into the highway. Until building commences, the adjoining owner can still exercise rights of ownership over it (*k*). The strip would seem to have the same legal status as that of the existing highway; if that is a private street it seems that the added strip can be made up at the expense of the frontagers under the appropriate private street works code as part of the private street.

In some cases, where plans of a new street are submitted to the local authority (*l*), and it seems that the new street will form a main thoroughfare or a main approach to the area, or a means of communication between thoroughfares or approaches, the authority may require the new street to be formed of such width as they may determine (*m*). If this power is exercised so as to require a new street to be formed of a width exceeding the normal

(*g*) Made under s. 157 of the 1959 Act or its predecessor (s. 157 of the Public Health Act, 1875), or under local legislation. These by-laws may regulate "all or any of the following matters, that is to say, the level, width and construction of new streets," in the local authority's area, and the provision for the sewerage of such streets.

(*h*) s. 159 (2), (3) and (4). The grounds of such an appeal are not easy to appreciate. Presumably the court would be entitled to investigate the service of the notices, etc., but it is not clear that it could inquire as to the existence of the jurisdictional facts, such as whether building operations were (or were likely to be) undertaken in the vicinity.

(*i*) As was definitely *not* the case under the 1925 Act!

(*k*) Subject of course to the restriction on building.

(*l*) In this section (163), the council of a borough or an urban district; the section does not apply to rural districts.

(*m*) 1959 Act, s. 163 (1).

maximum that could have been required under the by-laws by more than twenty feet, the local authority must pay compensation (*n*) for any loss or injury sustained by reason thereof; further, if any person is put to greater expense in the execution of street works by reason of the street being required to be in excess of the normal maximum width, the additional expense must be borne by the local authority (*o*).

Section 164, which is in force in some areas only (*p*), enables a local authority to vary the position or direction, and to fix the beginning and end of a new street when plans are submitted to them pursuant to the by-laws. An appeal lies against an order made under the section to quarter sessions at the instance of a person aggrieved, and compensation (*q*) is payable in respect of any loss or injury sustained. Under section 166 the "appropriate council" may in certain circumstances make an order allowing the widening of an existing street on one side only, to less than the width prescribed under the by-laws; again there is an appeal to quarter sessions at the instance of any person aggrieved by the making, or a refusal to make, an order under this section (*r*).

In modern practice, new streets orders and by-laws may cause difficulty, as the standards laid down in the by-laws are sometimes more stringent than would normally be required, especially in the case of small building estates; some planning authorities have, in consequence, obtained development orders from the Minister of Housing and Local Government, under section 13 of the Town and Country Planning Act, 1947, to the effect that new streets by-laws made by local authorities within the planning authority's area should be relaxed generally, provided the schedule of minimum street widths in the order is complied with. This procedure need not be resorted to in future, however, as any local authority now has power, with the consent of the Minister of Housing and Local Government, to relax the requirements of a new streets by-law or dispense with compliance therewith, in any case where they consider the operation of the by-law would be unreasonable (*s*).

(*n*) To be assessed by the Lands Tribunal in case of dispute: see 1959 Act, ss. 266 and 163 (3).

(*o*) This additional expense must be certified by the surveyor to the council; any case of dispute is to be determined by the local magistrates: s. 163 (4). This subsection deals with the cost of works that have to be executed; subs. (3) provides for compensation for land lost to the owner.

(*p*) See s. 290 and the Nineteenth Schedule.

(*q*) Assessed, in case of dispute, by arbitration: see s. 164 (5) and s. 267 of the Act of 1959; s. 266 thereof, giving jurisdiction to the Lands Tribunal, is not applied in this case. (*r*) 1959 Act, s. 166 (5).

(*s*) 1959 Act, s. 160: this is based on s. 63 of the Public Health Act, 1936, which applies only to building by-laws made under that Act. There was no similar power in the Public Health Act, 1875, applicable to the new streets by-laws made under s. 157 of that Act (see now s. 157 of the new Act).

5. Restriction of Ribbon Development

Section 1 of the Restriction of Ribbon Development Act, 1935, enabled the highway authority to adopt "standard widths" for roads, and to provide that no new means of access should be formed to specified roads, and that no new building should be constructed nearer to the middle of the road than a distance of half the standard width, without the consent of the highway authority. Under section 2 of the same Act, similar restrictions applied to all classified roads in relation to land within 200 feet on either side from the centre of the road. These sections have now been repealed, but the same controls are exercised as part of ordinary planning control under the 1947 Act, and conditions contained in 1935 Act consents may still be found registered in the local land charges register (*t*).

6. Town and Country Planning Act, 1947

The siting of buildings, access to roads, reservation of land for street widenings or improvements, provision of splays at road junctions, etc., are all matters which may now be provided for as part of normal planning control under the 1947 Act. Although planning control is not to be regarded as a "longstop" when other controls fail or are inadequate (*u*), in this subject, the official Government attitude is to encourage the use of planning control rather than the several specific powers discussed above. However, the decisions of the Minister given on appeals under section 16 of the Act suggest that the following general principles (*inter alia*) should be accepted by planning authorities:

(a) a condition should not be imposed in a planning permission requiring land to be conveyed to the highway authority for road widening or improvements (*w*);

(b) a condition should not be imposed requiring the developer to construct a service road, unless such road is to be provided solely on and for the use of the developer's own land (*x*);

(c) it is probably also improper for a condition to require an access to the highway (or other works) to be carried out to the approval of the *highway* authority, or of any body other than themselves (*y*);

(*t*) Such conditions are enforceable under s. 77 (4) of the 1947 Act; if a condition were registered in Part IV of the local land charges register, it does not have to be re-registered in Part III: see r. 10B in the Local Land Charges Rules, 1934, added by S.I. 1948, No. 2471.

(*u*) See para. 12 of Ministry of Local Government and Planning Circular 58/51.

(*w*) See decisions noted at [1951] J.P.L. 61 and [1953] J.P.L. 503.

(*x*) See decision noted at [1954] J.P.L. 703, and Mr. H. J. J. Brown's comments at [1957] J.P.L. 479.

(*y*) See Circular 58/51 (cited *supra*), para. 13.

(d) it is suggested that a condition requiring the developer to maintain an access or a service road in good condition is *ultra vires*, as being concerned with other than planning considerations, and therefore outside the spirit of section 14 (1) of the 1947 Act.

Often a particular planning permission may provide (by way of condition) for land to be reserved to form a lay-by, or for road widening (*z*), or for a service road; if such a condition complies with the general principles above-mentioned in the circumstances of the particular case, the strip or piece of land so reserved will have much the same status, and the same consequences would seem to follow, as a strip reserved pursuant to a new street order (see above). In the case of a service road, which is probably not in law part of the main highway, no one will be responsible for its maintenance unless and until it is made up as a private street at the expense of the frontagers (*a*).

Some types of development may not require planning permission, and yet they may be subject to one or other of the special controls mentioned above. For example, a poultry house for domestic use may be erected anywhere within the curtilage of an existing dwelling-house without the need to obtain express planning permission (*b*), and in most cases no plans will have to be submitted under the local building by-laws, but if the building is to be placed in front of the next door building, there may be a breach of section 75 of the Highways Act, 1959 (para. 1, above).

7. Public Utilities Street Works Act, 1950 (*c*)

This complicated measure, designed to reduce the number of occasions on which it is found necessary to break open the surface of a highway for road improvements, or the execution of work by "statutory undertakers" (*d*) is also of importance to the private landowner. Any land in private ownership which abuts on a maintainable highway or a prospectively maintainable highway (*e*),

(*z*) Especially where the development plan provides for the road in question to be widened.

(*a*) The highway authority will presumably be the frontagers for the whole length, on one side of the service road.

(*b*) Town and Country Planning (General Development) Order, 1950, First Schedule, Class I, para. 2; a garage may be erected within the curtilage of an existing dwelling-house without express p'anning permission, provided "no part of the [garage] projects beyonds the forwardmost part of the front of the original dwelling-house": (*ibid.*).

(*c*) See note at 15 Conv.(N.S.) 77.

(*d*) This includes gas and electricity boards, water undertakings, local authorities acting as sewerage authorities, and the General Post Office.

(*e*) Any private street (or even a piece of land intended to be used as such) may be declared by the local authority to be a prospectively maintainable highway (see 1950 Act, Second Schedule), and such a declaration has to be registered in the local land charges register.

which is the subject of a subsisting authorisation of compulsory acquisition by the highway authority, or which lies between the boundary of the street and an improvement line (*f*), is known as "controlled land" (*g*), except in so far as it is built on. The street authority may then authorise statutory undertakers to place their apparatus, mains, etc., in such land, but they (*h*) will be liable to pay compensation to the landowner in respect of any diminution of the value of an interest in controlled land or land adjacent thereto and held therewith by the giving of the authorisation, and also in respect of any damage actually sustained by such landowner.

8. Land Acquisition

As might have been expected from a modern administrative statute, the Highways Act, 1959, repeats the extensive powers contained in earlier legislation to acquire land, either by agreement or compulsorily (*i*), to the Minister of Transport and Civil Aviation, and to highway authorities generally. These provisions are contained in Part X of the Act, the most important being section 214, but the following special points may be worth noting:

(a) land being within 220 yards from the middle of a highway (*k*) maintainable at the public expense is particularly vulnerable to compulsory acquisition if it is needed to prevent the erection of buildings "detrimental to the view from the highway" (*l*); or if it is required for an improvement of the highway (*m*);

(b) land required for the development of a frontage to a highway may be compulsorily acquired (*n*);

(c) land lying between an improvement line (*o*) and the boundary of the street which is not occupied by buildings is liable to compulsory acquisition (*p*);

(d) there are special powers of acquisition for trunk or special roads (*q*), cattle-grids (*r*), bridges (*s*), road-ferries (*t*) and offices, etc. (*u*).

(*f*) Prescribed under s. 72 of the Highways Act, 1959, *supra*. No corresponding provision applies to land lying between a building line and the boundary of the street.

(*g*) 1950 Act, First Schedule.

(*h*) In most cases the authority will be able to recover such compensation from the undertakers.

(*i*) The Acquisition of Land (Authorisation Procedure) Act, 1946, will apply to any compulsory acquisition under the 1959 Act: s. 222 (2) thereof.

(*k*) Land more than that distance away cannot normally be acquired compulsorily, except as mentioned below: see 1959 Act, s. 214 (3).

(*l*) *Ibid.*, s. 214 (5).
(*m*) *Ibid.*, s. 214 (2).
(*n*) *Ibid.*, s. 214 (8).
(*o*) Prescribed under s. 72
(*p*) 1959 Act, s. 214 (1).
(*q*) *Ibid.*, s. 215.
(*r*) *Ibid.*, s. 219.
(*s*) *Ibid.*, s. 218.
(*t*) *Ibid.*, s. 220.
(*u*) *Ibid.*, s. 221.

9. Private Street Works

This is not intended to be a detailed treatise on the complicated law relating to the execution of private street works at the expense of the frontagers, but some comments must be made as to the changes to be made in the existing law when the Highways Act, 1959, comes into operation, as it repeals both of the two codes formerly in operation in different parts of the country. The Private Streets Works Act, 1892, disappears and is replaced by the "Code of 1892," contained in sections 174–188 of the 1959 Act, and section 150 of the Public Health Act, 1875, is similarly replaced by the "Code of 1875," to be found in sections 189–191. In addition there are a number of general "machinery" sections (200–213), which will now be common to both the Code of 1892 and that of 1875. The New Streets Acts of 1951 and 1957 are also repealed, and these are replaced by the "advance payments Code," to be found in sections 192–199 of the 1959 Act. Local legislation in force at the date of the passing of the 1959 Act is not affected thereby.

The following general points should be noted:

(a) The Act of 1959 simplifies the form of notices that must be served (*w*) when a provisional apportionment of private street works expenses has been prepared under the Code of 1872. In future, instead of receiving an almost incomprehensible copy of a resolution, the frontager will receive, as his first intimation that private street works are to be executed, a notice complying with paragraph 5 of the Fifteenth Schedule to the Act (*x*).

(b) The grounds of objection under the Code of 1892 have been redrafted (*y*); it is important that the correct ground should be chosen in the particular case and stated in the notice of objection (*z*), which notice should be served in accordance with section 282 of the Act.

(c) The special register of apportioned expenses maintained under section 13 (2) of the Private Street Works Act, 1892 has been abolished; all the information will be contained in Part II of the local land charges register.

(d) Section 209 "stops a hole" in the law, by enabling the local authority to apply to the magistrates for an order to the effect that private street works expenses (under either code) shall be recoverable from a former owner of premises

(*w*) As to notices and service thereof, see 1959 Act, ss. 280–282.

(*x*) The notice must be accompanied by a statement of the sum apportioned to the particular premises: Act of 1959, s. 174 (4).

(*y*) See s. 177 (1).

(*z*) *Brighton Borough Council* v. *Peachey* (*Investments*), *Ltd.* [1957] J.P.L. 585.

in any case where the magistrates are satisfied that a transfer of land was intended "for the purpose of evading the payment of expenses of street works." Hitherto a a similar clause (not quite so wide in effect) appeared in many local Acts, but it is now made of general application.

(e) The appropriate code may be operated in respect of a whole street, or in respect of any part of a street (*a*), and such a part may be severed laterally or longitudinally (*b*).

(f) Both codes apply only to a "private street," but this need not necessarily be a highway (*c*), although it cannot be a highway maintainable at the public expense.

(g) The advance payments code does not really affect the general principles of private street works legislation. This code merely provides for frontagers, subject to many detailed exceptions, some of which are within the discretion of the local authority (*d*), to be required to deposit or secure to the satisfaction of the local authority (*e*), before carrying out development fronting on a private street, the estimated apportioned expenses of carrying out private street works in that street. Notices of provisional and final apportionment (in the case of the 1892 code) of the cost of expenses incurred must still be served in due course (sometimes, of course, very much later) in the usual manner. An intending purchaser of land can now ascertain how the code affects his land and whether or not a payment has been made or refunded or a security given, by making a search in the local land charges register (*f*); it should no longer be necessary to make any special inquiries of the local authority on the subject.

Conclusion

The several controls exercisable by the local highway authority (or as the case may be) discussed briefly above, are often difficult to appreciate in practice; a prospective purchaser may wish to be advised as to the probability of one of these controls being exercised in his particular case. The key, we would suggest, is often to

(*a*) See definition of "street" in s. 295 (1) of the 1959 Act, and of "private street" in s. 213 (1), *ibid.*

(*b*) See, *e.g.*, *Bishop Auckland U. D. C.* v. *Alderson* [1913] 2 K.B. 324.

(*c*) *Taylor* v. *Oldham Corporation* (1876) 4 Ch.D. 395.

(*d*) See 1959 Act, s. 192 (3).

(*e*) The borough or urban district council and, in those rural districts to which the code has been applied by Ministerial Order, the county council.

(*f*) 1959 Act, s. 197, replacing s. 4 of the New Streets Act, 1951 (Amendment) Act, 1957. These items are registrable in Part IV of the register: Local Land Charges (Amendment) Rules, 1957; S.I. 1957, No. 1437.

be found in the certificate obtained in response to a local land charges search and the answers given by the local authority to the usual supplementary inquiries. These, together with a copy of any planning permission(s) affecting the property (*g*), should clarify the position in any particular problem with which a private practitioner may be faced. Armed with these, he should be able to obtain readily any further information he may decide he requires on a careful perusal of those documents. As suggested above, the first question is to settle the status of the highway in question; then find out who are the highway authority, how they have exercised their powers in relation to that highway in the past and, finally, endeavour to discover how they are likely to exercise those powers in the future. The purchaser's vendor cannot be expected to know all the answers to all these questions in every case; this subject is indeed a special—but important—example of the manner in which and the extent to which the task of the conveyancer acting for a purchaser has swung away from the investigation of title and towards an investigation of the degree of interference with private ownership that may be expected from the several agencies of the State and local government.

(*g*) This can be traced by a search of the register maintained under s. 14 (5) of the Town and Country Planning Act, 1947—usually (in a county area) by the district council. If copies are required, the authority concerned will usually make a small charge therefor.

TENANCIES AND SUBTENANCIES OF BUSINESS PREMISES

By R. E. Poole, ll.m., Solicitor

Part II of the Landlord and Tenant Act, 1954, is so framed that it protects a tenancy of premises actually occupied for the purposes of a " business " (in the rather wide sense given to that word by section 23 (2)), but excludes as far as possible from incidental protection the interests of landlords other than the head landlord, and the interest of the tenant in premises not occupied by him for business purposes.

Thus section 23 (3) confines the " holding " to which the protection of the Act extends to premises actually occupied by the tenant or his employee for business purposes; section 44 defines the landlord who has the power to take action under the Act in such a way that the immediate landlord is often excluded from the definition; Schedule VI gives the court power to grant reversionary leases, thus usually ensuring that the interest of the intermediate landlord will eventually drop out unless he has vested in him a term with a good many years still to run; and section 65 (2) ensures that when the interest of the intermediate landlord comes to an end the interest of the superior landlord shall be deemed the reversion for all purposes.

It is evident that these provisions are capable of creating relationships between landlord, tenant and subtenant which are quite different from those possible at common law, particularly where the head tenancy is coming to an end, and in this article some of the problems which arise from these relationships will be discussed, with particular reference to the effect of the expiration of a tenancy where there is a subtenancy in existence, and the manner in which the Act modifies the duty of a tenant to give vacant possession of the demised premises when his tenancy comes to an end.

To avoid confusion, the head landlord and the subtenant will be throughout referred to by those names, and the word " tenant " will be reserved for the immediate tenant of the head landlord. The person who, by virtue of section 44 of the Act, has the power to serve notice under the Act to determine a tenancy which it protects, or to oppose an application by the tenant for a new lease, will be referred to as the " competent landlord," and the expression " business statutory tenancy " will for convenience be used to

indicate the interest which exists under the Act after the term for which a tenancy was originally granted has expired.

The principles to be applied depend very largely on whether the head tenancy is determined, on the one hand, by effluxion of time or the act of the head landlord, or, on the other hand, by surrender or by the act of the tenant, and it will be necessary to discuss these alternatives separately. Determination by forfeiture of a superior tenancy is expressly excepted from the operation of the Act by section 24 (2), and is thus subject to the ordinary rules concerning relief against forfeiture, and is not within the scope of this article.

Subtenant's Interest at Common Law

At common law, where the interest of the tenant came to an end by effluxion of time or in consequence of a notice to quit served by the head landlord, it automatically determined the interest of the subtenant also. The manner in which it did so is illustrated by *Sherwood* v. *Moody* (*a*). In this case, the interests of the tenant and the subtenant were both protected by the Agricultural Holdings Act, 1948. The head landlord served notice to quit on the tenant, and immediately on receiving it the tenant served a similar notice on the subtenant. In the events which happened, the notice received by the subtenant was invalidated by the Agricultural Holdings Act, but the notice received by the tenant remained valid. It was admitted by counsel for both parties that at common law when a tenancy is terminated by notice in the proper way, that notice not only terminates the tenancy, but also terminates any subtenancy which may have been created during the tenancy, because a tenant is unable to grant any larger estate in the property than he has himself. Ormerod J. accepted this view of the law, and held that, as the interest of the tenant had come to an end, the subtenancy had also come to an end, and that there was nothing in the Agricultural Holdings Act or the regulations made thereunder to extend the tenancy of a subtenant for any longer period than the term of the head vacancy.

Besides giving a good example of the effect of the determination of the tenant's interest at common law, *Sherwood* v. *Moody* demonstrates rather neatly the distinction between the protection given to a tenancy by the Agricultural Holdings Act, which operates by continuing a term of years as a yearly tenancy and by giving a tenant power, if he wishes, to invalidate his landlord's notice to quit except in special circumstances, but does not generally interfere

(*a*) [1952] 1 All E.R. 389.

with the determination of a tenancy by any other event, and the protection given by Part II of the Landlord and Tenant Act, 1954, which makes the tenancy continue in existence in all cases unless it is terminated in accordance with the statutory provisions. It follows that decisions under the Agricultural Holdings Act, while helpful in other respects, give no direct assistance in deciding what is the nature of the subtenant's interest which by virtue of the Act survives the determination of the head tenancy when the subtenant has a business tenancy, and this is the next question with which we must deal.

Subtenant's Interest Under the Act

As there are apparently no decisions of the courts on the matter, the only means of forming an opinion is a careful examination of the terms of the Act itself. The relevant provisions are in section 25, which offers two alternatives. The first is set forth in section 25 (3), which applies to a tenancy which apart from the Act could have been brought to an end by notice to quit given by the immediate landlord. In such a case, a notice by the competent landlord to terminate the tenancy in the manner provided by the Act is not to expire earlier than the earliest date on which apart from the Act the tenancy could have been brought to an end by notice to quit given by the immediate landlord. The other alternative is in section 25 (4), which applies to any other tenancy and provides that in this case the statutory notice is not to expire earlier than the date on which apart from the Act the tenancy would have come to an end by effluxion of time.

It is evident that the framers of these two subsections had in mind tenancies held directly of the competent landlord, and meant to distinguish between a periodic tenancy, or a term with an available break clause, which was to continue as nearly as possible on its original contractual terms, and a term of years which would continue as a business statutory tenancy when the term expired. Nevertheless, it has been made clear by the House of Lords in *Wheeler* v. *Mercer* (*b*) that every tenancy protected by the Act must come within one or the other of these two categories.

Subtenancy: straight term of years

Where the head tenancy and the subtenancy are terms of years, no difficulty arises, since the term of the subtenancy must have expired before the head tenancy (otherwise the granting of the subtenancy would have amounted to an assignment of the head tenancy:

(*b*) [1957] A.C. 416.

Milmo v. *Carreras* (*c*)) and the subtenancy will already be a business statutory tenancy at the expiration of the head tenancy and will continue to be one afterwards. The same considerations will apply in all cases where the subtenancy is for a term of years and this term expires, or is determined by the exercise of a break clause in circumstances not amounting to the abandonment of the subtenant's rights under the Act, before the actual determination of the head tenancy.

Subtenancy: periodic or with break clause

In other cases, the position is much less clear. If the tenant had served on a subtenant, who had a periodic tenancy or a term of years determinable by a break clause, a notice to quit purporting to expire after the date of determination of the head tenancy, the notice would have been ineffective at common law, since at the date of its expiration the subtenant's interest would have come to an end in any case, while in the case of a subtenancy for a term of years without a break clause such a notice would have been impossible; a subtenancy which by virtue of the Act survives the determination of the head tenancy can therefore scarcely be a tenancy which apart from the Act could have been brought to an end by notice to quit given by the immediate landlord, so as to fall within section 25 (3). Yet a subtenancy which apart from the Act would have come to an end by the determination of superior tenancy is not very aptly described as one which would have come to an end by effluxion of time, so as to fall within section 25 (4), especially where the superior tenancy itself did not come to an end because of the expiration of a term of years but because of a notice to quit by the head landlord.

Nevertheless, it seems clear from the wording of the Act that any tenancy which cannot be brought within section 25 (3) must somehow be brought within section 25 (4), since section 25 (4) is expressed to relate to any tenancy not falling within section 25 (3). It follows that some kind of meaning, applicable to the case under discussion, must be put on the words "the date on which apart from this Part of this Act the tenancy would have come to an end by effluxion of time."

It is suggested that the only possible construction, compatible with the rest of the Act, which can be placed on these words is that they mean the date on which the head tenancy came to an end. To hold otherwise would mean that where a subtenancy was a periodic one it would never be determinable by the head landlord at all, as he would have no privity of contract with the subtenant to enable

(*c*) [1946] K.B. 306.

him to serve a common law notice to quit; and where the subtenancy was for a term of years it would preclude the head landlord from exercising his statutory powers against the subtenant until the term was about to expire, thus subjecting the head landlord to obligations created by an instrument to which he was not a party.

In the present state of the law, however, it might be advisable for the head landlord, when choosing a date for the expiration of a notice to the subtenant under section 25, to select a date if possible not earlier than that on which the tenant could have determined the subtenancy at common law if his tenancy had not expired or were not going to do so. It seems that in any case the notice need not expire exactly on a date on which a common law notice to quit would have expired, as any later date would equally satisfy the requirements of the Act.

Determination of Head Tenancy by Tenant

Very different considerations apply where the head tenancy comes to an end by surrender or by notice by the tenant to the head landlord.

It was laid down by Lord Ellenborough C.J. in *Doe* d. *Beadon* v. *Pyke* (*d*), that "though a surrender operates between the parties as an extinguishment of the interest which is surrendered, it does not so operate as to third persons, who at the time of the surrender had rights, which such extinguishment would destroy, and that as to them, the surrender operates only as a grant, subject to their right, and the interest surrendered still has, for the preservation of their right, continuance." Accordingly he held that a sublease was still valid notwithstanding the surrender of the head lease. The principle had previously been applied by him and Le Blanc and Bayley JJ. in *Pleasant* d. *Hayton* v. *Benson* (*e*), and seems to have been settled law ever since. The complete substitution of the reversion of the head landlord for that of the tenant is ensured by section 139 (1) of the Law of Property Act, 1925. The doctrine raises some curious problems on the nature of the rights of the head landlord against the subtenant, which will be commented upon later in this article.

In *Mellor* v. *Watkins* (*f*) Blackburn J. was considering a similar situation to that in *Doe* d. *Beadon* v. *Pyke*, but used words which were rather wider than were strictly necessary to deal with the facts before him, in saying: "No voluntary act on the part of [the tenant] by which his own interest might be determined, could put an end

(*d*) (1816) 5 M. & S. 146, 154.
(*e*) (1811) 14 East 234.
(*f*) (1874) L.R. 9 Q.B. 400, 405.

to the interest which he had created in [the subtenant]." These words could clearly cover the case of a notice by the tenant to determine his own tenancy, as well as a surrender, and the extended principle was applied by Warrington J. to a case where the tenant himself determined the head lease by notice under a break clause, in *Phipos* v. *Callegari* (*g*).

The principle was extended to the case of a notice to determine a periodic tenancy in *Brown* v. *Wilson* (*h*). In this case, both the tenant and subtenant had yearly tenancies, and the subtenant's interest came within the protection of the Agricultural Holdings Act, 1948. The tenant served a notice on the head landlord to determine the head tenancy, and a notice on the subtenant to determine the subtenancy: if the effect of the tenant's notice on the head landlord had been the same as that of a notice to quit by the head landlord, the position would have been the same as in *Sherwood* v. *Moody* (*i*), and the subtenant would have lost his statutory rights. Hilbery J. held that "the principle . . . seems to be that the law will not allow a man, by an act done between him and another, to impair or destroy the rights which he has granted a third party." He accordingly held that the notice served by the tenant on the head landlord left unaffected the rights which the subtenant derived either in terms or by statute from the underletting to him by the tenant. Although the decision is criticised by Foa, *Landlord & Tenant* (*k*), it appears to follow logically from *Phipos* v. *Callegari* and the dicta in *Mellor* v. *Watkins*, and there seems to be no authority to the contrary.

It therefore seems to be established that whether the tenant's interest is determined by surrender, or by the act of the tenant alone, it operates so far as the subtenant is concerned as an assignment to the head landlord, leaving the subtenancy unaffected except for the eventual substitution of the head landlord for the tenant as the person entitled to the immediate reversion. Admittedly, the proposition rests only on the words of Blackburn J. in *Mellor* v. *Watkins* which were *obiter*, and on *Phipos* v. *Callegari* and *Brown* v. *Wilson*, which are not reported in the regular series of reports, but there seems to be no contrary authority and it would be in accordance with the general principle that a man cannot derogate from his grant. Moreover, it seems to be recognised in section 44 (1) of the Act, which provides for the head landlord becoming the competent

(*g*) (1910) 54 S.J. 635.

(*h*) Stafford Assizes July, 1949. The case is unreported, but a fairly full account is given at (1949) 208 L.T.Jo. 144; this is reprinted at (1950) 156 *Estates Gazette* 45. There is a shorter account of the case at (1949) 93 S.J. 640.

(*i*) *Supra*.

(*k*) 8th ed., p. 832.

landlord only in cases where the interest of the tenant is to come to an end by effluxion of time or by virtue of a notice to quit already given by the head landlord.

Since the surrender of the head tenancy, or its determination by notice to quit given by the tenant to the head landlord, do not of themselves affect the subtenancy, the subtenancy will continue on its original contractual terms, whether or not it is protected by the Act, and no possibility will arise of a subtenancy protected by the Act being converted into a business statutory tenancy merely by the determination of the head tenancy.

Tenant's Duty to Yield up with Vacant Possession

Next, we have to consider how far the tenant owes to the head landlord a duty to give vacant possession of the premises when the head tenancy comes to an end. Here the law does not apparently distinguish between the different modes of determination of the head tenancy. The common law principle was expressed by Lord Kenyon in *Harding* v. *Crethorn* (*l*) as being that "when a lease is expired the tenant's responsibility is not at an end; for if the premises are in possession of an under-tenant, the landlord may refuse to accept the possession, and hold the original lessee liable; for the lessor is entitled to receive the absolute possession at the end of the term." This expression of the law was adopted by the Court of Exchequer Chamber in *Henderson* v. *Squire* (*m*). In that case the tenant had been given due notice to quit expiring on December 25, 1866, and had given the subtenant notice to quit expiring on December 21 in the same year. The subtenant having refused to quit the premises, the head landlord had recovered possession from him in an action of ejectment, and then claimed damages against the tenant for holding over. The head landlord was held to be entitled to recover from the tenant a sum equivalent to the rent which he had lost and to the expenses he had been put to in taking legal proceedings to recover possession from the subtenant.

From the tenant's point of view, therefore, the practical position at common law is that before his own tenancy comes to an end he must serve notice to quit on the subtenant, and enforce it, or else see to it by some other means that the subtenant vacates the premises in time. Besides ensuring that he can yield up the premises to the head landlord with vacant possession when his tenancy expires, he will usually wish to avoid getting the subtenant out too soon and so being left to pay rent to the head landlord for premises which are unoccupied and are bringing him in no income.

(*l*) (1793) 1 Esp. 57.
(*m*) (1869) L.R. 4 Q.B. 170, 173.

Position under the Act

We have some authority on the effect on the tenant's liability where he is prevented from giving up the premises with vacant possession because the interest of the subtenant is protected by statute, as there are two cases on the effect of such protection by the Rent Acts. In *Reynolds* v. *Bannerman* (*n*) the tenant and the subtenant both had yearly tenancies, and the tenant gave notice to the head landlord and to the subtenant. The subtenant refused to vacate the premises, relying on the Rent Acts, and the head landlord brought an action against the tenant for the rent under the head tenancy for the time the subtenant remained in occupation, or alternatively the same sum as for use and occupation. It was held by Swift and Acton JJ. that the tenant was not liable. As Swift J. put it, after distinguishing *Henderson* v. *Squire*: "In the case we are considering there was nothing more that the tenant could have done to get possession of the premises for the landlord, and the thing which prevented him from doing so was the statute."

Again, in *Watson* v. *Saunders-Roe, Ltd.* (*o*), the facts and decision were similar, though the facts were rather stronger in that the subletting had originally constituted a breach of covenant, which was held to have been waived, and the tenants took no action against the subtenant at all, merely informing him that if he stayed on he should pay his rent to the head landlord.

The principle behind these cases seems to be that the tenant is not liable for failing to take steps which would have been rendered altogether ineffective by statute. Although the statutory tenancy created by the Rent Acts is not a true tenancy like the business statutory tenancy preserved by the Landlord and Tenant Act, 1954, there seems to be no reason why this principle should not be applied, so far as it goes, to the case where the subtenancy is protected by the Act though the interest of the tenant is not. Accordingly, it seems that in such a case when the interest of the tenant comes to an end the tenant will not be liable to compensate the head landlord for the mere fact that the Act prevents him from giving up the premises with vacant possession.

Unfortunately, this does not quite dispose of the matter, since it does not necessarily follow from *Reynolds* v. *Bannerman* and *Watson* v. *Saunders-Roe, Ltd.*, that the tenant is absolved from taking steps which are still permitted by the statute and would have been for the protection of the head landlord's interests.

To consider whether such steps are possible, we must first discuss in more detail the provisions of section 44 of the Act. This

(*n*) [1922] 1 K.B. 719, 724. (*o*) [1947] 1 K.B. 437.

lays down that the person who is the competent landlord for the purposes of the Act is to be the owner of an interest in the demised premises which is either the fee simple or a tenancy which will not come to an end within fourteen months or less by effluxion of time or by virtue of a notice to quit already given by the immediate landlord. This interest is to be in reversion expectant (whether immediately or not) on the termination of the relevant tenancy, and is not itself to be in reversion expectant on an interest which fulfils the requirements of the section. It will be seen that the tenant, if he has a periodic tenancy or a term of years determinable by a break clause, will cease to be the competent landlord on receipt of notice to quit from the head landlord or fourteen months before the notice expires, whichever is the later; if he has a term of years not so determinable, he will cease to be the competent landlord fourteen months before the term expires. When this happens, the head landlord will become the competent landlord in place of the tenant, who will be deprived of any power to take action under the Act to determine the interest of the subtenant. If, however, the tenant determines his tenancy by surrender, or by serving a notice to determine it upon the head landlord, he will continue to be the subtenant's competent landlord until the surrender takes effect or the notice expires.

Even where the tenant is still the competent landlord his power to serve a notice under section 25 to determine the subtenancy, or to oppose an application by the subtenant for a new sublease, may be non-existent in practice, since in the majority of cases the only grounds on which a landlord can do so, as laid down by section 30 (1), are that on the termination of the current tenancy he intends to demolish or reconstruct the demised premises, or to occupy them for his own business.

In most cases, therefore, the Act practically deprives a tenant, whose tenancy is drawing to a close, of the power to serve a notice under the Act to determine the interest of the subtenant, or to oppose an application by the subtenant for a new sublease, even where he remains the competent landlord. In consequence, it is submitted that the Act absolves the tenant from any liability for failing to take such action.

Duty to exercise break clause

It remains to be considered whether there is any power left to the tenant against the subtenant at common law, and if so whether he can be made liable for failing to exercise it. In one case at least there is something that he can do. If the sublease contains a break clause exercisable by the tenant, it is clear from

the decision of Harman J. in *Weinbergs Weatherproofs, Ltd.* v. *Radcliffe Paper Mill Co., Ltd.* (*p*) that he has power to serve a notice under the clause, and that this will convert the subtenant's interest into a business statutory tenancy. The utility of this, for present purposes, depends very much on the answer to the question whether the expiration of the tenant's interest automatically converts the interest of the subtenant into a business statutory tenancy. If it does, the tenant's notice would merely make the conversion to a business statutory tenancy happen a little earlier than it would otherwise do, but if the expiration of the tenant's interest leaves that of the subtenant unaffected, apart from giving the head landlord the immediate reversion, it would be of great importance. Suppose that the head lease was for a term of fourteen years from June 24, 1954, determinable by the head landlord by six months' notice expiring on June 24, 1961, that the tenant has granted a sublease to a business tenant for the same term less a day, similarly determinable by him by notice expiring on June 23, 1961, and that the head landlord serves notice on the tenant to determine the head lease in 1961. In the present state of the law it is possible that if the tenant takes no action, the subtenancy will continue to exist until 1968, and that it will not be until 1967 that the head landlord will be able to start taking steps to obtain possession from the subtenant. For the reasons discussed earlier in this article, it is more probable that the subtenancy will be automatically converted into a business statutory tenancy on the expiration of the head tenancy, so that the head landlord will be able to make his notice to the subtenant expire on the date on which the head tenancy comes to an end, or any subsequent date, but the position is not so certain that the tenant would not be wise to serve notice in common law form to determine the subtenancy, even though he might be doubtful whether the notice would make very much real difference to the legal position.

Duty to determine periodic subtenancy

The question next arises whether the tenant should take similar action if the subtenancy is a periodic one. The possibility that a common law notice to determine a periodic tenancy might have the effect of turning it into a business statutory tenancy was discussed by the writer in a previous article (*q*) and it therefore suffices to say that in view of the decisions in *Orman Bros., Ltd.* v. *Greenbaum* (*r*) and *Rhyl U. D. C.* v. *Rhyl Amusements, Ltd.* (*s*) it is

(*p*) [1958] Ch. 437.
(*q*) "Common Law Notices and Business Tenancies," *ante*, p. 156.
(*r*) [1954] 1 W.L.R. 1520; [1955] 1 W.L.R. 248.
(*s*) [1959] 1 W.L.R. 465.

now most improbable that a notice in such circumstances which did not comply with the statutory requirements would have any effect at all; at least it seems to be established that it would not prevent the subtenancy from continuing in all respects on its original contractual terms. It therefore seems that where the head tenancy is determined by effluxion of time or a notice by the head landlord, the only possible duty of the tenant would be to exercise a break clause, if one existed, in the instrument creating the subtenancy, so as to convert the subtenancy into a business statutory tenancy.

Position where Tenant serves Notice to Quit

The position where the head tenancy was determined by a notice to quit served by the tenant on the head landlord would be similar, with two important exceptions. In the first place, the subtenant's interest, whether it was a term of years or a periodic tenancy, would not, as we have seen, automatically be converted into a business statutory tenancy by the expiration of the head tenancy. The probability of injury to the head landlord if the tenant failed to take advantage of a break clause in the sublease would therefore be much greater, and the duty of the tenant to take this action would be correspondingly more important.

Similar considerations would apply in the case of a surrender, with the obvious exception that the tenant's duties would presumably have been the subject of negotiation with the head landlord in most cases.

Can head landlord serve notice?

Secondly, a tenant who contemplates determining his own tenancy, whether by surrender, notice to determine a periodic tenancy, or the exercise of a break clause, and who has a subtenant whose interest is protected by the Act, may be under a duty not to act in such a way as to prevent the head landlord from becoming as soon as possible the competent landlord as against the subtenant. It will be recalled that if the tenant surrenders his tenancy, or determines it by his own act, he will continue to be the competent landlord until the surrender takes effect or the notice expires, and will thus bar the head landlord in the meantime from serving a notice under section 25 upon the subtenant, but that the tenant will not normally be in a practical position to exercise the powers of the competent landlord himself.

It may be that in such circumstances the head landlord might sometimes be able to make himself the competent landlord by serving notice to quit on the tenant, notwithstanding that the head

tenancy was coming to an end in any case, but there seems to be no English authority on the matter. In a New South Wales case, *Wilson* v. *Jolly* (*t*), Jordan C.J., discussing the effect of a surrender on the right of a head landlord to determine the head tenancy and so put an end to any subtenancy as well, said: "There appears to be no authority explaining how . . . this right of the lessor can be effectively exercised. It would seem that the only practicable way of exercising it would be for the head lessor to give to the lessee, who had surrendered, a notice terminating the notional continuance of the surrendered lease, in a form which would have been effective to terminate the lease itself, if it had not been surrendered. . . . If this be not so, the absurd position would arise that if a monthly tenant granted a sublease for fifty years, and the head lessor, in ignorance of its existence, accepted a surrender of the monthly tenancy, he would be bound to give effect to the sublease, and could not put an end to it as he could, during the actual continuance of the monthly tenancy, by giving the monthly tenant a month's notice to quit." This opinion has apparently met with criticism in Australia, as being unnecessarily artificial, and it has been suggested that as the principle in *Doe* d. *Beadon* v. *Pyke*, and the other cases discussed above, is merely a device to prevent the tenant from determining the subtenancy inconsistently with the terms of the sublease, it ought not to be extended so as to deprive the head landlord of the rights which he would have had if the head tenancy had continued, and that accordingly, where the head tenancy has been surrendered, the subtenancy will only continue until the time when a notice to quit, served by the head landlord on the tenant on the date of the surrender, would have expired. It is suggested that a further possibility is that the subtenancy may continue subject to the provisions of the head tenancy as to notices to quit, with the subtenant henceforth occupying the place of the tenant. This would avoid an automatic determination of the subtenancy, which might not be the desire of the parties, and would be a fair application, for the benefit of the head landlord as well as that of the subtenant, of the principle that the law will not allow a man, by an act done between him and another, to impair or destroy the rights which he has granted to a third party (*u*).

Where the tenant serves notice to quit on the head landlord, it seems that whichever is the correct alternative of these three would apply as from the expiration of the notice, as if the tenant had surrendered his tenancy on that date.

(*t*) (1948) 48 S.R. (N.S.W.) 460 (F.C.).

(*u*) This last view is supported by a remark of Le Blanc J. in *Pleasant* d. *Hayton* v. *Benson*, *supra*, which implies that the head landlord can in these circumstances serve a notice to quit on the subtenant, in the name of the tenant.

The position where the subtenancy is protected by the Act must therefore depend on which of the alternatives is correct. If the tenant's interest comes to an end by a surrender, the head landlord will thereupon become the subtenant's competent landlord. If Jordan C.J.'s suggestion is correct, the head landlord will then have the right, according to circumstances, either to serve a common law notice to quit on the tenant, at the expiration of which, it seems, the subtenancy will be turned into a business statutory tenancy which can be determined by a notice under section 25 expiring on any date, or else to serve a section 25 notice directly on the subtenant, expiring not earlier than the date on which the subtenant's term would have expired by effluxion of time if there had been no surrender.

If the second alternative is the correct one, and the subtenancy would only have continued at common law until notice to quit, served by the head landlord on the tenant, would have expired, then the subtenancy will automatically become a business statutory tenancy on the same date.

If it is the third alternative which is correct, and the subtenant would at common law have become subject to the provisions of the head tenancy as to notices to quit, the head landlord will on becoming the competent landlord have the choice of serving a notice under section 25 on the subtenant by reference to the date on which notice to quit could have been served under the instrument which created the subtenancy or that which created the head tenancy (or the dates on which the terms created by them would have expired).

As at common law, it seems that the expiration of a notice by the tenant to determine the head tenancy will have the same effect as a surrender. Consequently, in this case, the head landlord will have no power to do anything to determine the subtenancy until the tenant's notice expires, unless he has the right at common law to serve a notice to quit on the tenant, notwithstanding the previous service of the tenant's notice, and so can make himself the competent landlord. On the basis of Jordan C.J.'s remarks, this may be the case, but having regard to the present uncertainty of the law it seems that a tenant, who has sublet, would be wise not to rely upon the head landlord's ability to extricate himself from difficulties caused by the determination of the head tenancy by surrender or by notice by the tenant, and that in such a case it would sometimes be advisable for the tenant first to find out whether the head landlord is willing to take over the premises subject to the subtenancy, or at least for the tenant to give the head landlord the opportunity of serving notice to quit himself so as to protect his interests.

There would have been little apparent injustice if the Act had simply provided that where an unprotected tenancy came to an end, for whatever cause other than forfeiture, any subtenancy protected by the Act would automatically be converted into a business statutory tenancy, and that the head landlord would become the subtenant's competent landlord in all cases as soon as it became clear that the head tenancy would cease to exist within the next fourteen months. This would have obviated a great many of the difficulties and uncertainties discussed in this article.

Head Tenant's Interest Protected

Interesting problems also arise where it is the interest of the tenant which is protected by the Act, and not that of the subtenant. The tenant's interest in the whole of the premises demised to him will continue by virtue of section 24 until determined in accordance with the Act, but he will only be entitled to require from the court a new tenancy of the "holding," that is, the part of the demised premises which he actually occupies for the purposes of his business. This cannot possibly include the part sublet, as although it seems that subletting can be a "business" for the purposes of the Act it necessarily involves the giving up of possession by the tenant who carries it on (*w*). The head landlord has the right to insist however under section 32 on the new tenancy comprising the whole of the premises originally demised.

If the tenant and the head landlord take no action, or only take action which turns the head tenancy into a business statutory tenancy, the interest of the tenant will continue indefinitely, either as a business statutory tenancy or as a periodic tenancy. In either case it seems that the interest of the subtenant will continue unaffected. If the tenant takes steps to end this state of affairs, or prevent it from arising, by serving a notice waiving his rights under the Act, as permitted by section 24 (2) or section 27, it is possible that this would have the same effect as a surrender on his part, even if it determined his interest on the date on which it would have come to an end at common law; the principles applicable in such a case will be discussed later in this article. Before a notice under section 24 (2) or section 27 expires, or before a new tenancy not including the sublet premises commences, the tenant should therefore ensure that all necessary steps have been taken to obtain vacant possession of the sublet premises.

If, on the other hand, the tenant applies to the court for a new tenancy, his interest in the whole of the originally demised premises

(*w*) *Bagettes, Ltd.* v. *G. P. Estates, Ltd.* [1956] 1 Ch. 290. See also *Narcissi* v. *Wolfe* [1959] 3 All E.R. 71.

is continued by section 64 until three months after the application is finally disposed of, and with the interest of the tenant unless it expires by notice or by effluxion of time before then. It seems in view of the judgment of Wynn-Parry J. in *Re No. 88 High Road, Kilburn* (*x*) that this will be so even when a new tenancy is granted by the court. The tenant must therefore so arrange matters that he will be able to give vacant possession, if necessary, three months after final disposal of the application, while avoiding the possibility of the subtenant giving up possession too soon and leaving him to pay rent to the head landlord for empty premises. It is suggested that in view of the uncertainty of the date on which the tenant would have to give vacant possession, if at all, it might be advisable for him if possible to arrange with the subtenant for the conversion of the subtenancy into, say, a monthly tenancy, so as to give the tenant time to obtain possession in good time when the proceedings are disposed of, while leaving it open to the tenant and the subtenant to negotiate a new subtenancy if this becomes feasible.

Where the head landlord and the tenant agree on the grant of a new tenancy of the holding (that is, the premises actually occupied by the tenant for his business), whether with or without other premises, the original head tenancy will determine under section 28 on the commencement date of the new tenancy. The section provides that in these circumstances the Act is not to apply to the original tenancy, but leaves it an open question whether, in the case where part of the original demised premises have been sublet and the sublet part is not included in the new tenancy, the arrangement operates as a surrender of the original tenancy. Although the transaction is in some ways more in the nature of a surrender than a termination of the original tenancy by the act of the head landlord alone, it is submitted that the intention of the section is that the parties shall be put as nearly as possible in the position in which they would have been at common law, and that the transaction shall put an end to the subtenancy altogether. In any case, it will be for the tenant to see to it that he can give vacant possession of the sublet part.

Both Tenant and Subtenant Protected

Lastly, we have to consider the position where the interests both of the tenant and the subtenant are protected by the Act. Here we have to take account of the decision of the Court of Appeal in *Cornish* v. *Brook Green Laundry, Ltd.* (*y*). In that case, both the tenants and the subtenant had terms of years protected by the

(*x*) [1959] 1 W.L.R. 279.
(*y*) [1959] 1 Q.B. 394.

Act. The subtenant's term expired three days before the tenants', and when their terms expired the tenants and the subtenant stayed in occupation in reliance on section 24. No notice under section 25 was served by the head landlords, and after some months they offered the tenants a new lease of all the originally demised premises, on condition that certain repairs were done. As the tenants and the subtenant could not agree on the terms on which a new subtenancy should be granted, the subtenant applied to the court for a new tenancy. The tenants opposed the application on the grounds (among others) that they intended to occupy the premises for their own business, and the subtenant disputed their power to do so, contending that the tenants' acceptance of the head landlords' offer had created a new equitable tenancy under the rule in *Walsh* v. *Lonsdale* (*z*), and that as this interest had come into existence less than five years before, it precluded the tenants' ground of opposition, under section 30 (2). The Court of Appeal decided that as the repairs had not been done the *Walsh* v. *Lonsdale* rule did not apply, with the result that the tenants were still holding over under the Act and the subtenant's contention failed.

The importance of the decision for this discussion is that the court also held that the tenants had remained the subtenant's competent landlords at all times; if it had held otherwise it seems that it would necessarily have had to hold that the tenants had no standing to oppose the subtenant's application under the Act.

To appreciate the full significance of this it is necessary to consider the sequence of events which led up to the proceedings. The tenants' contractual term expired on September 29, 1956, so that if they had not had a business tenancy they would have ceased to be the competent landlords on July 29, 1955, and the new head landlords would have become the competent landlords in their place. The subtenant's contractual term expired on September 26, 1956. The agreement between the tenants and the head landlords was made in January, 1957, when the tenants and the subtenant were holding over under business statutory tenancies; as it was held that the terms of the agreement had not been carried out at the time of the hearing, the agreement cannot have changed the legal status of any of the persons concerned, so that it is clear that they were on the same footing in October 1957 when the subtenant applied to the court for a new lease.

Consequently, even if a common law notice to quit served by a head landlord on his tenant can turn the tenant's interest into a business statutory tenancy, it is now evident that it will not make

(*z*) (1882) 21 Ch.D. 9.

the head landlord the subtenant's competent landlord. As we have already seen, the decisions in *Orman Bros.* v. *Greenbaum* and *Rhyl U. D. C.* v. *Rhyl Amusements, Ltd.* have made it almost certain that the notice would have no effect whatever.

If the head landlord has no means of making himself the competent landlord, he is in a very difficult position. Notwithstanding that the tenant cannot claim a new tenancy of the sublet premises as of right, and notwithstanding that the head landlord may have good grounds for opposing a claim by the tenant for a new tenancy of the holding, the head landlord will be precluded from taking any steps to obtain possession from the subtenant until the court finally disposes of the tenant's application for a new tenancy, or until the head landlord has agreed with the tenant for the grant of a new tenancy of the tenant's holding, since until then it will not be possible to say with certainty that the original head tenancy must expire within the next fourteen months.

Provided *Cornish* v. *Brook Green Laundry, Ltd.* was correctly decided (and it would require a decision of the House of Lords to displace it) the only possible way out of the difficulty seems to be that the head landlord may become the competent landlord if he serves a notice on the tenant to determine his tenancy under section 25 (1), or notifies the tenant that he would oppose an application to the court for a new tenancy, under section 26 (6). No such notice had been served in *Cornish* v. *Brook Green Laundry, Ltd.* Although neither of these notices could ordinarily be said to come within the description of a notice to quit, so as to satisfy section 44, their effect is to deprive the head tenancy of its statutory protection, subject to its continuation pending disposal of the matter by the court. Thus, in the case of a tenancy for a term of years, such a notice may bring into existence the same state of affairs, for the purposes of section 44, that would have obtained if the tenancy had been unprotected, and in the case of a periodic tenancy the notice may operate as a notice to quit given by the immediate landlord, if a common law notice could have been served at the same time on the same person, or alternatively it may make it possible for the head landlord to make himself the competent landlord by serving a common law notice, which would otherwise have been ineffectual, on the tenant.

As far as any duty of the tenant to assist the head landlord is concerned, it has already been mentioned that the renunciation of his statutory rights may amount to a surrender, so that a protected tenant who serves a notice on the head landlord under section 24 (2) or section 27 may be in the same position as an unprotected tenant who surrenders his tenancy subject to a protected subtenancy.

Since it will be for the advantage of the head landlord that when the tenant's interest in the sublet premises comes to an end, by whatever means, the subtenant's interest should already be a business statutory tenancy, it may also be that the tenant, whether he renounced his statutory rights or not, would be liable if he failed to exercise any powers given to him by the instrument creating the subtenancy which would have had this effect on the subtenant's interest.

Conclusion

The questions raised in this article have had to be dealt with in a rather speculative manner, since the Act has little to say about the effect of subletting part or the whole of the premises, and the existing decisions of the courts leave many questions undecided. So far as conclusions may be drawn, they seem to be that the liability of a tenant to give vacant possession on the determination of his tenancy may not have been totally abrogated by the Act; that it is to the advantage of the head landlord that the interest of the subtenant should become a business statutory tenancy, and that the head landlord should become the subtenant's competent landlord, as soon as possible; and that the tenant should do what he can to forward these objects and may be liable to the head landlord if he fails to do so, but will not be liable for mere inability to give vacant possession in consequence of the operation of the Act.

It has been assumed throughout that all the persons concerned are perfectly well informed of the relevant facts at all times, and that any notice requiring information under section 40 has been faithfully answered. To introduce the possibility that any party was prevented from taking appropriate action by false or insufficient information would have complicated still further an already complicated discussion; but it may not be wholly irrelevant to suggest in closing that what has been said may throw some light on the kinds of injury which might be caused by failure to comply with section 40, and the kinds of remedy to which it might give rise.

NOTES OF RECENT CASES

1. *REAL PROPERTY AND CONVEYANCING*

By F. R. Crane, ll.b., Solicitor

Att.-Gen. v. *St. Ives Rural District Council and another*
[1959] 3 W.L.R. 575; [1959] 3 All E.R. 371 (Q.B.D.)

Drainage — damage through non-maintenance — whether breach of statutory duty confers right of action on individual.—The title of this case, especially in the Weekly Law Reports, is insufficiently revealing. The action was brought primarily by a farmer, referred to in the judgment as the plaintiff, for a declaration and damages in respect of flooding from ill-maintained surface water drains, against the St. Ives R.D.C. as first defendants and the Huntingdon County Council as second defendants. There was joined a claim by the Attorney-General, on the relation of the plaintiff (as shown in the All England Reports), for a similar declaration.

Salmon J. held first that the responsibility for the drains had originally fallen upon commissioners under the Enclosure Act, 1800, had been transferred to the first defendants by the combined and consecutive effect of the Highway Act, 1862, and the Local Government Act, 1894, and had finally vested in the second defendants by the Local Government Act, 1929, s. 30. The learned judge went on to hold that the duty to maintain these drains did not rest upon the defendants *qua* highway authority, so that they could not rely on the non-liability of such an authority for non-feasance—a rule which he described as archaic and anomalous. Consequently the final question was whether the original Act, the Enclosure Act, 1800, gave the plaintiff a personal right to sue. As one might expect the Act was silent on the point. But as no penalty for non-maintenance was provided Salmon J. had little difficulty in finding the plaintiff competent to sue, referring to *Phillips* v. *Britannia Hygienic Laundry Co.* [1923] 2 K.B. 832, *Groves* v. *Wimborne* [1892] Q.B. 402, and *Cutler* v. *Wandsworth Stadium, Ltd.* [1949] A.C. 398.

Ching Garage, Ltd. v. *Chingford Corporation*
[1959] 1 W.L.R. 959; [1959] 3 All E.R. 175 (Q.B.D.)

Access to highway—obstruction by street refuge—whether statutory authority to erect—Public Health Act, 1875, *s.* 149*; Road Traffic Act,* 1956, *s.* 45.—The owner of land adjoining a highway has prima facie a right of access to the highway from any part of his premises (*Marshall* v. *Blackpool Corporation* [1935] A.C. 16). At the same time local authorities or other bodies may have statutory powers entitling them to interfere with this right of access. The question always is whether the statute authorises the act in question which

interferes with the right of another (see, *e.g.*, *Manchester Corporation* v. *Farnworth* [1930] A.C. 171; *Metropolitan District Asylum* v. *Hill* (1881) 6 App.Cas. 193; *Marriage* v. *East Norfolk Rivers Catchment Board* [1950] 1 K.B. 248).

In the present case the plaintiffs sought a declaration and injunction in view of the defendants' proposal to put a pedestrians' street refuge on the plaintiffs' land used as an "access slope" to their garage. (This access, forty feet wide, had incidentally been constructed in 1932 with the Corporation's permission.) The defendants sought to rely first upon the Road Traffic Act, 1930, s. 55, but it was belatedly discovered that as a result of the Road Traffic Act, 1956, that section had become irrelevant. Other statutes relied upon were the Public Health Act, 1875, s. 149, and the Road Traffic Act, 1956, s. 45, but Lord Parker C.J. held that neither Act could be construed to give the authority desired, so the plaintiffs obtained their declaration.

This victory may, however, be partially hollow, for Lord Parker suggested that the desired result could have been achieved under the Town and Country Planning Act, 1947, s. 26, but then the consent of the Minister would have been necessary, and compensation payable under section 27 of the Act.

Central Electricity Generating Board v. *Jennaway*
[1959] 1 W.L.R. 937; [1959] 3 All E.R. 409 (Ch.D.)

Easement—implied grant of ancillary rights—whether doctrine excluded where easement acquired under statutory powers—electricity wayleave.—It is well settled that the grant of any particular property carries with it such ancillary rights as are necessary to the proper enjoyment of the thing granted. The doctrine seems to have been important principally in relation to mining rights and to rights necessary to make easements effective, *e.g.*, repair of pipes carrying water or drainage. (See, for example, *Pomfret* v. *Ricroft* (1669) 1 Wm. Saund. 321; *Anon.* (1785) 6 Mod. 149; *Cardigan* v. *Armitage* (1823) 2 B. & C. 197; *Rowbotham* v. *Wilson* (1860) H.L.C. 347; *Michael Borys, Ltd.* v. *Canadian Pacific Ry.* [1953] A.C. 217.)

Lloyd-Jacob J. here applied the rule to enable the Central Electricity Generating Board, which had acquired a statutory wayleave to carry lines over the defendant's land, to erect very substantial pylons to carry the power lines.

In reaching this conclusion the learned judge had to construe various statutes relating to electricity supply (the details of which are outside the scope of this note) but did not consider any of the detail therein abrogated the doctrine above set out. ". . . there is no intrinsic reason for supposing that the legislature, in directing the procedure for the acquisition of easements, intended them, when procedure, to be shorn of any of the rights which the law regards as normally and properly incidental to them, so that, in the absence of any context which indicates some intended limitation, an easement secured otherwise than from a consenting dominant grantor

ought not to be rendered ineffective by a denial of ancillary rights." ([1959 1 W.L.R. at p. 945; [1959] 3 All E.R. at 415.)

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2. *TRUSTS*

By F. R. Crane, ll.b., Solicitor

Re Cohen's Will Trusts [1959] 1 W.L.R. 865; [1959] 3 All E.R. 523 (Ch.D.)

Variation of trusts—whether need to provide for improbable contingency—Variation of Trusts Act, 1958, *s.* 1.—Very large funds were settled upon the testator's widow for life, subject thereto for his four children upon protective trusts during their lives, and subject thereto the capital of each child's share was to be held for such child's children as their parent might appoint, and in default of appointment equally; the share of any child dying without issue was to accrue to the others. Counsel described these limitations as "the most disadvantageous trusts possible"; the greater part of the income went in tax and on death of the tenant for life (aged 80) the greater part of the capital would go in estate duty. It was now desired to divide the capital into three parts, the first for the widow absolutely, the second for the children absolutely, and the third on trust for the grandchildren and their issue.

The report does not disclose further details of the scheme but it was stated that if any child predeceased the widow—an unlikely event—the grandchildren would be worse off than under the existing trusts. The question was whether provision should be made for this contingency. Danckwerts J. approved the scheme on behalf of the infant grandchildren without any such provision, saying "If people ask the court to sanction this sort of scheme, they must be prepared to take some sort of risk, and if it is a risk that an adult would be prepared to take, the court is prepared to take it on behalf of an infant." These words are a further indication of the courts' liberal approach to the Variation of Trusts Act, 1958.

Re Joseph's Will Trusts [1959] 1 W.L.R. 1019; [1959] 3 All E.R. 474n. (Ch.D.)

Variation of trusts—form of order—Variation of Trusts Act, 1958, *s.* 1.—This decision gives guidance on a point of practice. Vaisey J., having approved a variation of trusts which would not take effect until the death of a life tenant now aged 50, was asked to include in his order a direction that the arrangement should be put into effect, thereby precluding any reopening of the matter. The learned judge held that under the Variation of Trusts Act, 1958, he could give such a direction (referring to two unreported decisions by Lord Jenkins sitting as a judge of the Chancery Division) and that in this particular case he should do so.

Winstone v. *Winstone* [1959] 3 W.L.R. 660; [1959] 3 All E.R. 580 (Vacation Court)

Husband and wife—jurisdiction to restrain interference in occupation of matrimonial home—whether proceedings begun—Matrimonial Causes Act, 1950, *s.* 2; *Supreme Court of Judicature (Consolidation) Act,* 1925, *s.* 45.—A point of procedure was here decided. A wife had applied by originating summons under the Matrimonial Causes Act, 1950, to present a petition for divorce within three years of the date of the marriage. That summons stood adjourned, and the wife now sought an interim injunction restraining her husband from interfering with her occupation of the matrimonial home (see *Silverstone* v. *Silverstone* [1953] P. 174). Winn J. was, however, constrained to hold that he had no jurisdiction to issue an injunction until proceedings had begun, and that the power given by the Supreme Court of Judicature (Consolidation) Act, 1925, s. 45, was so limited. Consequently the wife's present application was dismissed. In the event she filed the next day a petition for judicial separation and obtained the desired injunction six days later.

This decision recalls the suggestion, made in relation to the much discussed licensee case of *Hurst* v. *Picture Theatres, Ltd.* [1915] 1 K.B. 1, that a judge present at a theatrical or other performance could restrain by injunction the ejection of a ticket-holder, and that in consequence such ejection would necessarily be tortious. The difficulty in this procedural solution is that which applied here—no proceedings, no jurisdiction.

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3. *CHARITIES*

By A. Kiralfy, Barrister-at-Law

Re Bennett, Sucker v. *Att.-Gen.* [1959] 3 W.L.R. 427; [1959] 3 All E.R. 295

Scheme of prerogative application—cy près.—Vaisey J. has here dealt with a curious backwater of the law of charitable trusts, though declining to be drawn into a complete disquisition. The leading case is *Moggridge* v. *Thackwell* (1803) 7 Ves. 36. Here the court held that, where there was a general charitable intention, a distinction must be drawn between a direct gift and a gift on trust. In the case of a trust, for example, for a non-existent institution which would have been charitable, the court could direct a scheme to be drawn up for its approval, presumably because of its inherent jurisdiction over trusts, and the rule that a trust will not fail for want of a trustee. On the other hand a direct gift to a non-existent institution fails at law, but, if it shows a general charitable intention, it will not pass as undisposed of, but will pass to the Crown, which, as *parens patriae,* will make arrangements for a suitable application of it, under the royal prerogative. This case was followed in several early nineteenth-century cases (cited in 3 Hare 195) where applications to

charity were made by warrant under the royal sign manual, *e.g.*, cases of direct bequests to a non-existent asylum, a non-existent hospital and a non-existent institution. In *Re Pyne* [1903] 1 Ch. 83 the court cited *Moggridge* v. *Thackwell* but directed a scheme, because there the gift was to trustees on charitable trusts which were to be specified in a codicil which in the event was never executed.

This abstruse issue has been missed in a number of other cases because there had been no argument on it, and the following cases are now to be regarded as decided *per incuriam*. Thus the court itself directed schemes in *Bennett* v. *Hayter* (1839) 2 B. 81, where there was a direct gift to "the Jews' poor, Mile End," in a case of a direct gift to a non-identifiable society in *Re Clergy Society* (1856) 2 K. & J. 928, in *Re Maguire* (1870) 9 Eq. 652, where there was a direct bequest to an undiscoverable "curates' aid society" and in *Re White* [1893] 2 Ch. 41 (C.A.) where there was a direct gift to "(blank) . . . religious societies." In this last case *Moggridge* v. *Thackwell* was cited, but the argument turned on whether the intended beneficiaries were charitable.

(Theobald 350)

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4. *LANDLORD AND TENANT CASES*

By D. Macintyre, m.a., Barrister-at-Law

Frederick Lawrence, Ltd. v. *Freeman, Hardy & Willis, Ltd.*
[1959] 3 W.L.R. 275; [1959] 3 All E.R. 77 (C.A.)

Landlord and Tenant Act, 1954—business premises—application for new tenancy—landlord's intention to occupy for own purposes—purchase or creation of interest within five years of termination of current tenancy—"purchased"—"created"—"termination of current tenancy."—The landlords in this case opposed an application for a new tenancy of business premises upon the familiar ground set out in section 30 (1) (g) of the Landlord and Tenant Act, 1954, namely that they intended to occupy the premises for the purposes of their own business. The tenants did not dispute the fact that the landlords did have this intention. But they contended that the interest of the landlords had been either "purchased" or "created" after the beginning of the period of five years which ended with the "termination of the current tenancy" within the meaning of section 30 (2).

The tenants had, since 1934, held the premises by virtue of a sub-lease granted by the predecessors in title of the landlords for a term expiring on March 22, 1959. In 1952 the landlords' predecessors took a new reversionary lease subject to the tenancies affecting the premises: and on November 1, 1954 this reversionary lease was transferred to the landlords, the transfer being duly registered at the Land Registry on November 13, 1954. No pecuniary consideration was mentioned in the transfer: but the covenants implied under

section 77 (1) (c) of the Law of Property Act, 1925, were incorporated. On March 28, 1958 the landlords served a notice under section 25 of the Landlord and Tenant Act, 1954, terminating the tenancy on March 22, 1959. On July 18, 1958 the tenants applied for a new lease.

Upon these facts it was conceded in the Court of Appeal and agreed by the court that the word "created" in section 30 (2) of the Act of 1954 refers to the creation of the interest of the landlord, not to the creation of the landlord's title to that interest. In the present case the relevant interest had been "created" in 1952 (more than five years, on any view, before the termination of the tenancy), even though it did not become the landlord's interest till November 1954.

On the meaning of the word "purchased," the court felt compelled by the previous decision of the Court of Appeal in *H. L. Bolton (Engineering) Co., Ltd.* v. *T. V. Graham & Sons, Ltd.* [1957] 1 Q.B. 159 (noted at Vol. 21, p. 77) to hold that "purchased" in this context means "bought for money"; and that a transfer in consideration of covenants is not a "purchase" for the purposes of section 30 (2). In the present case, however, the transfer of this particular leasehold interest had been preceded by a contract of sale dated June 30, 1954, the subject-matter of which consisted not only of this particular leasehold, but of the business of the vendors and a number of other properties, both freehold and leasehold, as well. The Court of Appeal held (1) that it was permissible to look at that contract in order to ascertain the true nature of the transaction recorded in the transfer; (2) that upon the true construction of that contract it was one single indivisible contract of sale, so that upon the particular facts of this case the landlord's interest had been "purchased" within the meaning of section 30 (2); and (3) that the date of the purchase was the date of the contract (June 30, 1954) rather than the date of the transfer or of the registration of the transfer at the Land Registry.

The landlords had, therefore, purchased their interest, in the view of the Court of Appeal, less than five years before the date upon which the landlords' notice of termination of the tenancy under section 25 of the Act expired. But counsel for the landlords argued that even so they had not purchased it less than five years before the "termination of the current tenancy," since section 64 of the Act provides in effect that a tenancy shall not come to an end, in cases where an application to the court has been made, earlier than three months after that application has been finally disposed of. In the result, the Court of Appeal held that section 64 "is not to be regarded as being incorporated in section 30 (2) for the purpose of ascertaining the termination of a current tenancy." But that is as far as the decision on this point goes. The court expressly refrained from criticising *Re 88 High Road, Kilburn* [1959] 1 W.L.R. 279 (noted at p. 231, *ante*), where Wynn-Parry J. decided that section 64 must be taken into account when one is considering the date upon which a new tenancy granted by the court is to begin under section 33.

Leave to appeal to the House of Lords was granted.

Narcissi v. *Wolfe* [1959] 3 W.L.R. 431;
[1959] 3 All E.R. 71 (Ch.D.)

Landlord and Tenant Act, 1954 — business premises — security of tenure—" the holding."—It was agreed in this case that the tenants were entitled to a new tenancy of certain business premises under the Landlord and Tenant Act, 1954. But a dispute arose with regard to the property which constituted the " holding " of which a new tenancy should be granted; and the court was called upon to designate that property " by reference to the circumstances existing at the date of the order " (see section 32 (1)). " The holding," it will be remembered, is defined by the Act as " the property comprised in the tenancy, there being excluded any part thereof which is occupied neither by the tenant nor by a person employed by the tenant and so employed for the purposes of a business by reason of which the tenancy is one to which [Part II] of this Act applies " (section 23 (3)).

The tenant occupied the ground floor and basement of the demised premises in connection with his business as a restaurant proprietor. But he sublet the three upper floors as furnished flats. After proceedings had been commenced, however, but before the hearing, the first-floor flat became vacant and the tenant used it mainly as a temporary food store. But he also kept some furniture there, slept there on one occasion, and sometimes used it to a limited extent as an office. Upon those facts the ground floor and basement clearly formed part of the holding: but the second and third floors, in the view of Roxburgh J., did not, since, even though the furniture belonged to the tenant, those floors were occupied by subtenants.

Difficulty arose, however, with regard to the first floor. The tenant admitted that his purpose in using the first-floor flat was partly to obtain a new lease of it by occupying it at the date of the order, although he did need some storage space, whilst certain work of renovation and reconstruction was carried out in the basement. Roxburgh J. held that even so the occupation at the date of the order was genuine and not merely colourable. He ignored the office user, since, in his view, such user was in breach of a covenant in the lease: and he refrained from deciding whether the amount of furniture was in itself sufficient to make the occupation revert to the tenant when the subtenant left, or whether one night's residence in several months would have that effect. But the tenant was in fact in real need of storage space at the date of the order, and he was in fact occupying the first floor at that date. There is no reason why a tenant should not take advantage of a loophole which an Act of Parliament has given him.

Boltons (House Furnishers), Ltd. v. *Oppenheim*
[1959] 1 W.L.R. 913; [1959] 3 All E.R. 90 (C.A.)

Landlord and Tenant Act, 1954—business premises—notice to terminate tenancy — intention to demolish premises — form of notice — preliminary point of law—practice.—The decision of Danckwerts J. in this case (noted at p. 312, *ante*) has been affirmed. Although a

landlord who opposes a tenant's application for a new tenancy on the ground set out in section 30 (1) (f) of the Landlord and Tenant Act, 1954, must always prove as an essential condition of obtaining that relief, that he could not reasonably carry out his intended demolition or reconstruction without obtaining possession of the holding, the concluding words of section 30 (1) (f), which impose that obligation, need not be set out in the landlord's notice of opposition under section 25. These concluding words, in the view of both Hodson and Harman L.JJ., are not a "ground" to be stated in the notice, but merely a proviso preventing the landlord relying on the ground set out in section 30 (1) (f) if he can reasonably carry out his intention without obtaining possession. Harman L.J. also considered that in any event those words are in fact stated in the notice, since (1) the prescribed form of notice refers the recipient to the back of the form, where the words or their equivalent are expressly set out, and (2) any notice under section 30 (1) (f) must necessarily mean that the landlord alleges that he could not do the work without obtaining possession, since, if this were not so, the landlord would be out of court.

Upon the point of practice the court held that a preliminary point relating to the form of the notice should be raised in the originating summons, and that the court should be asked to construe the notice before hearing the originating summons on the merits.

Leave to appeal to the House of Lords was refused.

Re St. Martin's Theatre [1959] 1 W.L.R. 872; [1959] 3 All E.R. 298 (Ch.D.)

Landlord and Tenant Act, 1954—*business premises—application for new tenancy—landlord's intention to occupy for own purposes—practice—discovery of documents.*—The tenants in this case applied for a new tenancy of business premises under the Landlord and Tenant Act, 1954. The landlord claimed that the tenants ought not to be granted a new tenancy for the reasons set out in section 30 (1) (a) and (c) of the Act: and he also opposed the application on the ground set out in section 30 (1) (g), namely, that he intended to occupy the holding for the purpose of carrying on business there himself. It appeared from a report of an official referee that the tenants owed some £16,000 in respect of dilapidations. On applications for discovery by both landlord and tenants Danckwerts J. held that the landlord was entitled to see the tenants' balance-sheets and profit and loss accounts, since the financial position of a prospective tenant is always of the greatest materiality to a landlord, especially in a case where the tenant is a limited company: but he refused to order the production of income tax returns for the past three years, bank pass sheets and other documents relating to the financial position of the landlord. Such documents are unlikely to be relevant as evidence of ability to carry on business in the future: and in any event the tenants' request was, in his view, grossly oppressive.

Leave to appeal has been refused, both by Danckwerts J. and by the Court of Appeal.

Spyropoulos v. *McLelland* [1959] 1 W.L.R. 862; [1959] 3 All E.R. 319

Landlord and Tenant (Temporary Provisions) Act, 1958—*appeal from county court—practice—costs.*—Section 4 (2) of the Landlord and Tenant Act, 1958, provides that in proceedings for the recovery of a dwelling-house, in which a suspension of execution is granted or refused under section 3 of the Act, the court shall not have power to make an order for costs except in two specified cases. The Court of Appeal has held that "the court" in section 4 (2) means the court of first instance only, and that there is nothing in the Act of 1958 to prevent the award to a successful tenant of his costs in the Court of Appeal.

Sleafer v. *Lambeth Borough Council* [1959] 3 W.L.R. 485; [1959] 3 All E.R. 378 (C.A.)

Repairs — weekly tenancy — construction of tenancy agreement — implied terms — no express obligation to repair — tenant injured through lack of repair—liability of landlords.—The decision in this case turned mainly upon the true construction of an agreement for a weekly tenancy of a council flat. The agreement contained (*inter alia*) the following conditions: Clause 2 required the tenant to reside in the flat; clause 5 obliged him to repay to the council the cost of repairing any damage done and replacing any broken windows; clause 9 forbade him to do or allow to be done any decorative or other work to any part of the flat without the written consent of the council; clause 11 reserved to the council liberty to enter and inspect the state of repair of the flat and to execute repairs therein; and clause 15 provided that the tenant should deliver up the flat in good and tenantable condition, subject to fair wear and tear. Owing to a long-standing defect the front door jammed, and it could only be closed by pulling on the knocker on the outside of the door. This knocker came away and the tenant was injured. The tenant claimed (1) that it was an implied term of the contract that the council should at least keep the flat reasonably fit for human habitation, and (2) that the council, being aware of the defect, were liable to him in tort.

On the first point Morris and Ormerod L.JJ. held that there was no such implied term. Clause 9 of the contract, upon which the tenant mainly relied, did not prohibit repairs by the tenant; it was merely designed to enable the council to keep control over any work done and to prevent the creation of haphazard conditions in the premises as a whole. Clause 2, in the view of Morris L.J., was designed to ensure that no one took a flat in a time of housing shortage without in fact living in it. Willmer L.J., on the other hand, expressed great sympathy with the view that clause 2 did impose upon the landlords a contractual duty to do such repairs as would enable the tenant to comply with clause 2. He held, however, (1) that even if there was such a contract, it had not been broken since the repairs in this case were too trivial to fall within it, and (2) that even if there had been a breach of contract, the damage suffered by the tenant might well have been too remote.

Counsel for the tenant also relied on a passage from the judgment of Somervell L.J. in *Mint* v. *Good* [1951] 1 K.B. at p. 521 to the effect that both sides, in the case of a weekly tenancy, would contemplate as a basis of the contract that a house would be kept in reasonable and habitable condition by the landlord and not by the tenant. Morris L.J. took the view, however, in the present case, that Somervell L.J. meant no more than that both sides would contemplate that in fact and in practice the landlord would do repairs; not that he should be under an obligation to do them.

On the question of liability in tort the court was unanimous in holding that no such liability existed. It was impossible for the tenant to show that the council owed any duty to him otherwise than under the contract of tenancy.

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5. *PLANNING CASES*

By V. G. Wellings, M.A.(Oxon.), Barrister-at-Law

Fawcett Properties, Ltd. v. *Buckingham County Council* [1959] 2 W.L.R. 884; [1959] 2 All E.R. 321 (C.A.)

Permission subject to condition—relation of condition to local planning considerations—condition not void for uncertainty.—The powers conferred on local planning authorities to impose conditions on the grant of planning permission are wide enough to permit conditions prescribing the permitted class or classes of occupants provided that a condition in that respect, as in others, is *intelligibly and sensibly related to the local planning scheme and proposals for the area in question*. Lord Evershed M.R. preferred the italicised words to the formula of Lord Denning in the Court of Appeal in the *Pyx Granite* case (*infra*), *viz.*, the condition must fairly and reasonably relate to the permitted development, and to the formula of Roxburgh J. in the present case, *viz.*, the condition must fairly and reasonable relate to local planning considerations. Lord Denning's formula has not been impugned in the House of Lords (*infra*).

In 1952 the council granted a permission under section 14 of the Act of 1947 for development of land at Chalfont St. Giles by building thereon a pair of semi-detached cottages. The permission was subject to a condition that "the occupation of the houses shall be limited to persons whose employment or latest employment is or was employment in agriculture as defined by section 119 (1) of the Town and Country Planning Act, 1947, or in forestry, or in an industry mainly dependent upon agriculture and including also the dependants of such persons as aforesaid." The wording of the condition was adapted from section 115 (2) of the Housing Act, 1936 (a provision dealing with contributions by county councils towards housing expenses in rural districts). The reason for imposing the condition was stated to be "because the council would not be prepared to permit the erection of dwelling-houses on this site unconnected with the use of the adjoining land for agricultural or similar purposes." The permission was registered as a local land charge. Chalfont St. Giles

was within the metropolitan green belt but no development plan was yet in operation although one was being prepared so that section 36 of the Act applied. Roxburgh J. ([1958] 1 W.L.R. 1161) held that the condition was *ultra vires* the council and also void for uncertainty.

The Court of Appeal, applying the test described at the beginning of this note, held that although in certain respects the condition was dissociated from planning policy expressed in the outline development scheme as necessary for planning the area as an agricultural area, it could not be said that the condition could not implement that policy, nor was it invalidated by the disparity with the stated reasons (which required a topographical limitation not found in the condition itself). The court further held that although the condition was not clearly expressed and there might be difficulty in applying it to particular cases, it was not void for uncertainty. The wording of the condition was nevertheless roundly criticised. The main reason which persuaded the court not to declare it void for uncertainty appears to have been that the condition must have been acted on many times for more than a quarter of a century without working unsatisfactorily.

Pyx Granite Co., Ltd. v. *Ministry of Housing and Local Government* [1959] 3 W.L.R. 346; [1959] 3 All E.R. 1 (H.L.)

Development—need for permission—declaration—jurisdiction of court.—The House of Lords reversed the decision of the Court of Appeal (1958) 22 Conv.(N.S.) 313. The company had claimed declarations that development which it wished to carry out in the Malvern Hills was authorised by a private Act of Parliament (*i.e.*, the Malvern Hills Act, 1924) within Sched. I, Class XII of the General Development Order, 1948, and did not therefore require permission, and that, in any event, the conditions imposed by the Minister under section 14 of the Act when granting permission in 1949 and 1953 were invalid. The House agreed with the majority in the Court of Appeal that there was nothing in section 17 of the Act which excluded the jurisdiction of the court to grant the declarations sought; section 17 does not confer on landowners a special remedy for the enforcement of rights but provides a cheap and expeditious procedure by which they can if they so desire ascertain the extent of the restrictions which, according to official opinion, are imposed by the Act on their ordinary rights as landowners. There was in fact no application under section 17 but it was contended that that section supplied the only procedure by which the subject could ascertain whether permission is necessary for the development of his land. Disagreeing with the Court of Appeal, the House held that heads of agreement between the company and the Malvern Council and relating to quarrying operations by the company in the Malvern Hills were given statutory force in the Malvern Hills Act, 1924, so that no permission was required for the proposed development. In the circumstances it was unnecessary to proceed to consider the question of the validity of the conditions although there was some discussion as to whether they could be attacked only by way of certiorari. Lord Goddard thought not. No answer to the question raised by Hodson L.J. in the Court of Appeal (whether if a condition

is void the permission to which it is subject must fall with it) is to be found either in the speeches of the House in this case or in the judgments of the Court of Appeal in *Fawcett's* case (*supra*).

THE LIBRARY

Prideaux's Precedents in Conveyancing. 25th ed. Vol. 2. By T. K. Wigan, and I. M. Phillips. lxxii, 1035 and (index) 168 pp. (£6 6s.) Vol. 3. By I. M. Phillips, E. H. Scamell, and V. G. H. Hallett. xcvi, 1014 and (index) 124 pp. (£6 6s.) London: Stevens & Sons, Ltd., and Solicitors' Law Stationery Society, Ltd.

With the publication of the above volumes, the latest edition of this well-proven work is now complete. As far as the contents are concerned, the present volumes follow the pattern of the previous edition and deal alphabetically with topics ranging from Leases to Wills. It is a pity, however, that no room was found for some copyright precedents and that in Vol. 3, under "Miscellaneous Instruments," the form of apprenticeship contained in the previous edition has now been omitted.

It is difficult to review a publication of this nature but on a fair sampling the precedents, by and large, appear to have been brought up to date (reflected in the colourful contemporary binding) and deal adequately enough with present day conditions.

Although different parts have been assigned to different editors, the work retains its unity and there appears to be little, if any, overlapping and the cross references are, except in one or two instances, sufficient.

A few of the precedents could do with a little more pruning and tidying up. Thus the form for a lessee's covenant to pay rates, taxes and other outgoings is a bit of a hotch-potch, and neither in the notes thereto nor in the section of the introductory general statement of law dealing with these matters is the effect of section 18 of the Finance Act, 1957 (passed in consequence of the decision in *Gatehouse* v. *Vise* [1957] Ch. 367), clearly stated. Again, the form of lessor's notice under section 146 of the Law of Property Act, 1925, for breach of covenant to repair, is made rather cumbersome by including, albeit in summary fashion, the provisions of section 196 of the Act (relating to notices) for the purposes of the lessee's counter-notice under the Leasehold Property (Repairs) Act, 1938. Although section 1 (4) of the latter Act requires the time and manner in which the counter-notice can be served to be specified, it is, in the opinion of the reviewer, excessively cautious to reproduce the provisions of section 196 of the Law of Property Act, 1925.

On the other hand, some of the forms could be improved and expanded. For instance, those dealing with equitable mortgages might include a clause appointing the mortgagee attorney of the borrower for the purpose of executing a legal mortgage or exercising the powers of sale. The value of the purely formal precedent of a declaration of reasons for omitting to make provision for dependants under the Inheritance (Family Provision) Act, 1938, would be enhanced by giving examples of some of the more usual of such reasons.

A very good feature of the section on Leases is the setting out in full of the forms of the statutory notices required under the Landlord and Tenant Act, 1954. These notices are mainly those which are required to be given by the landlord, but there are also many occasions when the tenant has to give notice or counter-notice, for which no statutory form is provided. Some examples of these tenant notices have been printed in *The Conveyancer*, Vol. 18 (and see also Vol. 21), and these, with possible amendments and additions, could have been usefully incorporated in *Prideaux*.

These and other criticisms of omission and commission are of comparatively

minor importance when looking at *Prideaux* as a whole. There are, however, one or two more vital matters which have come to the attention of the reviewer. The last precedent of all is a deed regulating rights of light and air on two adjoining estates, in which there are mutual grants of easements. But there are no acknowledgments for production or covenants for safe custody of the relevant documents of title, which one would expect in accordance with good conveyancing practice. Again, there is no reference either in the section on Separation Deeds or that on Wills, where one would expect to find it, to the Matrimonial Causes (Property and Maintenance) Act, 1958, which, generally speaking extends the provisions of the Inheritance (Family Provision) Act, 1938, to the case of a "former wife," *i.e.*, a woman whose marriage to the deceased was during his lifetime dissolved or annulled. It may be that the relevant sections were completed and already set up in type before the Act was passed, thus making it technically impossible to recast these sections. It is observed, however, that the preface is dated May 1959. Surely it could have been possible to have made some mention in the preface or in a short additional note of the application of the Act. Incidentally, one also wonders whether the editor of the section on Separation Deeds has considered the practical evidential difficulties attendant upon the *dum casta* clause which appears therein.

Some of the outstanding features in which *Prideaux* excels are the general statements of law introducing each section. Whilst these clearly cannot, and in fact are not intended to, replace the standard textbooks, they nevertheless provide in association with the very full notes a succinct explanation of the different points of law and practice which the conveyancer must, at his peril, bear in mind when drafting even the simplest of documents. Doubts have sometimes been expressed as to the usefulness of such general statements, but, from one's personal experience, the conveyancer is greatly assisted by having the law available in summary form when he is doing his "homework"—as he has to so often—away from his usual reference books.

P. E.

The Sale of Flats. 2nd ed. By EDWARD F. GEORGE, LL.B., Solicitor. Sweet & Maxwell, Ltd. xxiv and 222 pp. (£1 7s. 6d. net.)

That this work fulfils a real need is evidenced by the fact that the second edition has been called for within two years after the publication of the first. Nowhere else can the practitioner so readily trace the multifarious problems endemic in the sale of flats—and find such reliable answers. Whether dealing with proprietary rights in columns of air, or third party insurance, or the incidence of Schedule A and Schedule D income tax—and all these matters are either new to or rewritten in this edition—Mr. George combines lucid exposition with a practical approach. The volume is divided, as was its predecessor, almost equally between text and precedents, and a new feature is an up-to-date survey of the market in flats by Mr. David Piercy.

It is pleasant to note that the increase in cost of living for solicitors is reflected in an increase of 40 per cent. (from 5 to 7 guineas) in the suggested sum to be paid to the lessor's solicitors for preparing and printing a long lease of a flat in precedents 1 and 2. Some of the precedents (*e.g.*, Nos. 12, 16 and 19 state the appropriate stamp duties, and it would be an advantage if others were to be similarly annotated.

There is an interesting new chapter on Co-operative Flat Schemes, which points out the very real problems involved and deals optimistically with possible solutions. Other new features are a detailed consideration of *Halsall* v. *Brizell*, some valuable additional points in the section "Consideration of the Contract" (pp. 77–79), and full case references in the table of cases. *Att.-Gen.* v. *Antrobus* on p. 42 and *Dearle* v. *Hall* on p. 86 are incorrectly cited.

This reviewer welcomed the first edition as an indispensable adjunct for the conveyancer advising on the sale of flats, and so it remains in this up-to-date, expanded and improved edition.

R. G. R.

PRECEDENTS

FORM 1

Agreement for Employment of Assistant Solicitor (*a*)

(*Drafted by J. M. McKean*, B.A.(OXON), Solicitor)

THIS AGREEMENT is made the —— day of —— 19— BETWEEN —— (called "the Firm") and —— (called "the Assistant")

IT IS AGREED that the Firm will employ the Assistant and the Assistant will serve the Firm as Assistant Solicitor for a period of —— years (subject to determination as provided in this Agreement) from the —— day of —— 19— on the following terms:

1. Remuneration.

The Assistant's remuneration will be a salary paid by monthly instalments at the rate of:

(a) £—— for the first year of service

(b) £—— for the second year of service

2. Duties and obligations of Assistant.

(a) The Assistant will

(i) attend punctually at the office of the Firm either at —— or —— as the Firm may determine or at such other places as his duties may require

(ii) carry out the orders of the Partners in the Firm

(iii) devote his whole time and attention to and to the best of his skill perform his duties as Assistant Solicitor to the Firm during office hours and not absent himself without consent

(*a*) The particular interest in this form lies in its unusual drafting. It seeks to eliminate what is considered by the draftsman to be unnecessary legalistic terminology and arranges the subject-matter in headed paragraphs which are numbered and, where necessary, have sub-paragraphs and sub sub-paragraphs.

(iv) keep or cause to be kept such accounts and records as the Firm requires of all money paid and received relating to any matter entrusted to or undertaken by him

(b) The Assistant will not

(i) except so far as is necessary and proper in the ordinary course of his employment make public or disclose to any person any information which may come to his knowledge in the course of his employment as Assistant Solicitor to the Firm

(ii) act as Solicitor Clerk or agent in any matter for any person except in his capacity as Assistant Solicitor to the Firm

(iii) be engaged either as principal servant or agent whether directly or indirectly in any other business without the consent of the Firm

3. Holidays.

The Assistant will be entitled to —— weeks holiday (not to include Saturdays Public or Bank Holidays) during each year at times convenient to the Firm

4. Illness of Assistant.

(a) If the Assistant is prevented by illness or accident from performing his duties he will be entitled to receive his full salary for the first four weeks of incapacity and thereafter one half of this amount

(b) If the Assistant is so incapacitated for more than eight weeks in any period of fifty-two consecutive weeks then his employment will at the option of the Firm forthwith determine on payment of two months' salary at the full rate and all arrears of salary and expenses

5. Law Society Fees and Compensation Fund.

The Firm will pay:

(a) Law Society's fees in respect of the Assistant's membership of the Society and his Annual Practising Certificate

(b) The Assistant's contribution to the Law Society's Compensation Fund.

6. Expenses.

The firm will reimburse the Assistant all expenditure incurred by him in the performance of his duties and will also pay him such allowance in respect of the running of any private car he may use in connection with the Firm's business as may be agreed

7. Determination.

In any of the following events at the option of the Firm this Agreement will forthwith determine without notice payment in lieu of notice compensation or damages:

(i) the Assistant's grave misconduct, or

(ii) the Assistant's breach of this Agreement

8. Restriction on activity of Assistant after the determination of this Agreement.

The Assistant agrees with the Firm and as a separate agreement with each of the above mentioned partners in the Firm that he will not within five years of the expiration or determination of this Agreement be concerned either directly or indirectly in the office profession or business of a Solicitor within the Borough of —— or the Urban Districts of ——

SIGNED by the above named ——— in the presence of:

SIGNED by the above named ——— in the presence of:

FORM 2

Form of Conveyance where there have been several uncompleted sales subject to a mortgage between three companies (two of which are in liquidation) the mortgagee joining in to release his security.

THIS CONVEYANCE is made the —— day of —— 19— BETWEEN *AB Limited* (in liquidation) whose registered office is situate at *etc.* (hereinafter called "AB") of the first part *LI* of *etc.* the Liquidator of AB (hereinafter called "the First Liquidator") of the second part *CD Limited* (in liquidation) whose registered office is situate at *etc.* (hereinafter called "CD") of the third part *LII* of *etc.* (hereinafter called "the Second Liquidator") of the fourth part *EF Limited* whose registered office is situate at *etc.* (hereinafter called "the Vendor") of the fifth part *The GH Building Society* incorporated under the Building Societies Act 1874 whose Chief Office is situate at *etc.* (hereinafter called "the Society") of the sixth part and *IJ* of *etc.* (hereinafter called "the Purchaser") of the seventh part

WHEREAS:—

(1) AB is the estate owner in respect of the fee simple of the property hereby conveyed free from incumbrances

(2) By a Legal Charge (hereinafter called "the Legal Charge") dated the —— day of —— 19— and made between AB of the first part PQ and KS (Sureties) of the second part and the Society of the third part the property hereby conveyed was together with certain other property charged unto the Society by way of legal mortgage to secure the principal sum and interest thereon as therein mentioned

(3) By an Agreement dated the —— day of —— 19— AB agreed with CD for the sale to it of the fee simple of the property hereby conveyed (together with certain other property) Subject to the Legal Charge but no assurance thereof has yet been taken and it was further agreed and admitted by and between AB and CD that the whole of the purchase moneys had been paid and secured to the satisfaction of AB and that AB held (*inter*

alia) the property hereby conveyed as Trustee and Nominee for and on behalf of and to the direction of CD

(4) At an Extraordinary General Meeting of the Members of AB held on the —— day of —— 19— a Special Resolution was duly passed that AB should be wound up voluntarily and that the First Liquidator should be and he was thereby appointed to be the Liquidator of AB for the purposes of such winding up

(5) The First Liquidator acting on behalf of AB has agreed with CD to carry into effect the before recited Agreement in the manner hereinafter appearing

(6) By an Agreement dated the —— day of —— 19— CD agreed with the Vendor for the sale to it of the fee simple of the property hereby conveyed (together with certain other property) Subject to the Legal Charge but no assurance thereof has yet been taken and it was further agreed and admitted by and between CD and the Vendor that the whole of the purchase moneys had been paid and secured to the satisfaction of CD and that CD held (*inter alia*) the property hereby conveyed as Trustee and Nominee for and on behalf of and to the direction of the Vendor

(7) At an Extraordinary General Meeting of the Members of CD held on the —— day of —— 19— a Special Resolution was duly passed that CD should be wound up voluntarily and that the Second Liquidator should be and he was thereby appointed to be the Liquidator of CD for the purposes of such winding up

(8) The Second Liquidator acting on behalf of CD has agreed with the Vendor to carry into effect the said Agreement dated the —— day of —— 19— in the manner hereinafter appearing

(9) The Vendor has agreed with the Purchaser for the sale and transfer to him of the fee simple of the property hereby conveyed free from incumbrances for the sum of £——

(10) The Society on receiving the sum of £—— part of the said purchase money has agreed to join herein in the manner hereinafter appearing

Now in pursuance of the said respective agreements and in consideration of the sum of £—— on or before the execution of these presents paid by the Purchaser (with the consent and concurrence of the First Liquidator and the Second Liquidator hereby testified) in manner following that is to say as to the

sum of £—— part thereof to the Society by the direction of the Vendor (the receipt whereof the Society hereby acknowledges) and as to the balance of £—— to the Vendor (the payment and receipt of which said sums as aforesaid making together the said purchase money of £—— the Vendor hereby acknowledges)

THIS DEED WITNESSETH as follows:—

1. AB as such Trustee as aforesaid acting by the First Liquidator and by the direction of the Second Liquidator and the Vendor hereby conveys the First Liquidator as Trustee by the direction of the Second Liquidator and the Vendor hereby conveys CD as such Trustee as aforesaid acting by the Second Liquidator and by the direction of the Vendor hereby conveys the Second Liquidator as Trustee by the direction of the Vendor hereby conveys and the Vendor as Beneficial Owner hereby conveys and confirms unto the Purchaser ALL THAT [*parcels*] TOGETHER with and SUBJECT to [*as required*] TO HOLD the same unto the Purchaser in fee simple FREED AND DISCHARGED from all principal moneys and interest secured by and from all claims under the Legal Charge (so far as the same relate to the property hereby conveyed) to the intent that the same shall be extinguished in regard to the property hereby conveyed

2. The First Liquidator hereby covenants with the Purchaser that he has not done or knowingly suffered or been party or privy to any act or thing whereby AB is prevented from conveying the property hereby conveyed in manner aforesaid

3. The Second Liquidator hereby covenants with the Purchaser that he has not done or knowingly suffered or been party or privy to any act or thing whereby CD is prevented from conveying the property hereby conveyed in manner aforesaid

4. The Society hereby acknowledges the right of the Purchaser to production and delivery of copies of the documents of title set forth in Part I of the Schedule hereto (possession of which is retained by the Society)

5. AB acting by the First Liquidator hereby acknowledges the right of the Purchaser to production and delivery of copies of the documents of title set forth in Part II of the said Schedule hereto (possession of which is retained by AB)

6. CD acting by the Second Liquidator hereby acknowledges the right of the Purchaser to production and delivery of copies of the documents of title set forth in Part III of the said Schedule hereto (possession of which is retained by CD)

7. The Vendor hereby acknowledges the right of the Purchaser to production and delivery of copies of the documents of title set forth in Part IV of the said Schedule hereto (possession of which is retained by the Vendor) and hereby undertakes with the Purchaser for the safe custody of the said documents

8. The Vendor for itself and its successors in title hereby convenants with the Purchaser and his successors in title that as soon as all or any of the documents set forth in Part I of the said Schedule hereto shall come into the custody of the Vendor or its successors in title the Vendor or (as the case may be) its said successors will at the request and cost of the Purchaser or his said successors give to him or them a Statutory Undertaking for the safe custody thereof and that after the said documents shall have so come into custody as aforesaid and until such Undertaking shall have been given the Vendor and its successors shall be subject to the same obligations in all respects as if such Undertaking had been given whilst the said documents were in its or their custody

9. [*Certificate as to value if appropriate*]

IN WITNESS whereof the First Liquidator has affixed the Common Seal of AB hereto the Second Liquidator has affixed the Common Seal of CD hereto the Vendor and the Society have caused their respective Common Seals to be hereunto affixed and the First Liquidator the Second Liquidator and the Purchaser have hereunto set their respective hands and seals the day and year first before written

THE SCHEDULE before referred to

Part I

[*Documents acknowledged by the Society*]

Part II

[*date*] Special Resolution of this date for the voluntary winding up of AB

[*date*] The *London Gazette* of this date

Part III

[*date*] Special Resolution of this date for the voluntary winding up of CD

[*date*] The *London Gazette* of this date

Part IV

[*date*] Contract of this date between AB (1) and CD (2)

[*date*] Contract of this date between CD (1) and the Vendor (2)

FORM 3

Declaration of Trust to Establish a Group Life Assurance Scheme for the benefit of Members of a Firm (*a*).

(*Supplied by Messrs. Dendy, Paterson & Simpsons, Solicitors*)

THIS DEED OF DECLARATION OF TRUST is made the —— day of —— 19—

WHEREAS:—

(1) Certain employees of —— have agreed to combine for the purpose of forming a Group Life Assurance Scheme to be known as the —— Group Life Assurance Scheme (hereinafter called "the Scheme") being a Scheme to enable such employees to make certain provision for their dependants by way of temporary life assurance upon advantageous terms

(2) AB of *etc.*, CD of *etc.*, and EF of *etc.* (hereinafter called "the Trustees" which expression shall include the survivor of them or other the Trustees for the time being hereof) have agreed to act as Trustees of the Scheme

NOW THIS DEED WITNESSETH and it is hereby agreed and declared as follows:—

1. The Trust hereby created shall be administered by the Trustees in accordance with the provisions hereof which shall constitute a valid legal Trust binding upon the Trustees

2. The Trustees shall effect a Master Policy with —— or with such other Life Assurance Company as not less than a two-thirds majority of the members of the Scheme shall from time to time select securing the benefits required by the members of the Scheme in accordance with proposals completed by them respectively and shall collect from the members and on their behalf pay the premiums due under such Policy Provided always that with the consent of not less than a two-thirds majority of the members of the Scheme the Trustees shall have power to cancel any Master Policy for the time being in force by giving due notice in advance to terminate the same on the anniversary of any year of assurance

(*a*) Stamp 10s.

and in substitution therefor to effect a similar Master Policy with such other Life Assurance Company as shall be selected as aforesaid

3. The Scheme shall come into operation on the —— day of ——, 19—

4. All moneys received by the Trustees under the Master Policy in respect of a member of the Scheme who has died shall be held by them on trust to pay the same to the legal personal representatives of such member

5. The number of Trustees shall not be fewer than three and the power of appointing new Trustees shall be vested in the Trustees for the time being hereof who may appoint a member of the Scheme as a new Trustee in the place of any Trustee who shall die or retire from office or become incapable of acting or cease to be a member of the Scheme

6. The administration and management of the Scheme shall be vested in the Trustees who may appoint one of their number to act as Secretary and the Trustees shall meet at such times not being less than once a year as they shall decide and shall make regulations for the conduct of their business the summoning of meetings the appointment of a Chairman the recording of resolutions and all other matters in connection with the administration management and business of the Scheme. Three of the Trustees present at a meeting shall form a quorum and at every meeting of the Trustees all questions shall be decided by the votes of the Trustees present taken by a show of hands. In the case of an equality of votes the Chairman of the meeting shall have a second or casting vote

7. The Trustees shall cause true and full accounts to be kept to the —— day of —— in every year of all moneys passing through their hands and also a record of all matters proper to be recorded so as to show the full facts relating to the Scheme and shall produce such accounts and records to any member of the Scheme on request

8. The Trustees may from time to time delegate any business to any one or more of their number

9. Any two of the Trustees may jointly give receipts and discharges for any moneys payable transferable or deliverable to the

Trustees either under the Master Policy or otherwise and every such receipt or discharge shall be as valid and effectual as if it were a receipt or discharge signed by all the Trustees

10. The Scheme shall be dissolved and the affairs thereof wound up and the trusts hereinbefore declared shall be determined in the event of not less than a two-thirds majority of the members of the Scheme deciding and directing the Trustees in writing to discontinue it or in the event of the Trustees being unable for any reason to effect a Master Policy on behalf of the members but otherwise the said trusts shall continue during the life of the survivor of the issue now living of his late Majesty King George the Sixth and 21 years after the death of such survivor and such further period (if any) as may be lawful

11. The expression "member" shall include all persons who are members of the Scheme at the date of these presents together with all persons who may become members of the Scheme at any time hereafter

IN WITNESS, etc.

FORM 4

Forms of Assent for giving effect to a Testamentary Gift of two Businesses and Premises where the Beneficiary is required to bear a Proportion of Estate Duty and to undertake to discharge the Debts and Liabilities of the Businesses (*a*).

1

THIS ASSENT AND DEED OF COVENANT is made the —— day of —— 19— BETWEEN AB of *etc.* (hereinafter called "the Personal Representative") of the one part and CD of *etc.* (hereinafter called "the Beneficiary") of the other part

WHEREAS:—

(1) XY late of *etc.* (hereinafter called "the Testator") by his Will dated the —— day of —— 19— after appointing the Personal Representative to be the executor and trustee thereof bequeathed (in the events which happened) to the Beneficiary the goodwill of his two businesses then carried on by him under the styles or firms of "PQ" and "RS" of *etc.*, and the Testator declared that that gift should include all stock in trade plant and effects belonging to him in connection with or used for the purposes of the said businesses and the benefit of all contracts subsisting in relation thereto at his death and also all book debts which should then be owing to him in connection with the said businesses and any securities for money cash or money at the Bank to the credit of his business accounts and the Beneficiary should take over and discharge all his liabilities in connection with the said businesses existing at his death and should indemnify his estate against the same and he also gave to the Beneficiary the freehold property known as *etc.*, upon which the said businesses were carried on and he further declared that the

(*a*) Two assents are desirable, one in full form for the business assets containing the necessary collateral provisions and the other in short form for the business premises, thus keeping the trusts of the Will off the title.

proper proportion (having regard to the value of the matters comprised in the above gifts as compared with the value of his whole estate for the purposes of duty) of the estate duty payable upon or by reason of his death should be charged upon the said businesses and premises and should be borne by the Beneficiary in exoneration of the residue of his estate

(2) The Testator died on the —— day of —— 19— without having revoked or altered his said Will which was duly proved on the —— day of —— 19— in the [Principal] Probate Registry by the Personal Representative

(3) The stock in trade plant and effects belonging to or used for the purposes of the said businesses and beneficial contracts and book debts subsisting in relation thereto and all securities for money cash or money at the Bank to the credit of the Testator's business accounts are together with the respective estimated values thereof and of the goodwill of the said businesses set forth in the First Schedule hereto

(4) The liabilities of the Testator in connection with the said businesses existing at his death are (so far as the Personal Representative has been able to ascertain the same) set forth in the Second Schedule hereto (hereinafter called "the Ascertained Liabilities")

(5) The proper proportion of estate duty to be borne by the Beneficiary (having regard to the value of the matters comprised in the above recited gifts as compared with the value of the Testator's whole estate for the purposes of duty details whereof are set forth in the Third Schedule hereto) is £——

(6) The Personal Representative at the request of the Beneficiary has agreed to assure to the Beneficiary the property and funds set forth in the First Schedule hereto and also by a separate assent intended to be executed contemporaneously herewith to assure to the Beneficiary the freehold property known as —— aforesaid upon the Beneficiary permitting the Personal Representative to retain out of the cash in hand or the cash at —— Bank referred to in the First Schedule hereto the said sum of £—— in full satisfaction of the proper proportion of estate duty declared by the Will to be charged upon the said businesses and premises and to be borne by the Beneficiary.

Now in consideration of the premises THIS ASSENT WITNESSETH as follows:—

1. The Personal Representative as personal representative hereby assents to the vesting in the Beneficiary of ALL THAT the property funds and rights set forth in the First Schedule hereto save and except the sum of £—— retained by the Personal Representative in full satisfaction and discharge of the proper proportion of estate duty to be borne by the Beneficiary as hereinbefore recited to hold the same unto the Beneficiary for such interest as the Testator had power to dispose of by Will

2. The Beneficiary hereby covenants with the Personal Representative as follows:—

(1) that the Beneficiary will in due and proper course pay discharge and satisfy all the debts and liabilities set forth or referred to in the Second Schedule hereto and also all other the debts and liabilities (if any) of the Testator in connection with the said businesses as may have existed at the date of the Testator's death and which now remain outstanding or undischarged

(2) that the Beneficiary will at all times hereafter save harmless and keep indemnified the Personal Representative and his estate and effects and also the estate and effects of the Testator from and against (i) all actions proceedings costs claims demands and expenses whatsoever on account of any omission to pay and discharge the said debts and liabilities or any of them and (ii) all actions proceedings costs claims demands and expenses whatsoever in respect of the amount of estate duty which by Clause 2 of the Testator's said Will is declared to be charged on the property thereby bequeathed to the Beneficiary and to be borne by the Beneficiary in so far (but not otherwise) as the amount of such estate duty shall exceed the said sum of £——

IN WITNESS, *etc.*

THE FIRST SCHEDULE above referred to

Assets of the said Businesses

THE SECOND SCHEDULE above referred to

Liabilities of the said Businesses

THE THIRD SCHEDULE above referred to

	£	s.	d.	£	s.	d.
Net value of the Testator's estate				——	—	—
Net value of assets of businesses	——	—	—			
Value of freehold property known as ——	——	—	—			
Total value of Beneficiary's assets				——	—	—
Total amount of Estate Duty payable on Testator's Estate:				——	—	—
Amount of Estate Duty apportionable to Beneficiary:				——	—	—

II

I AB of *etc.*, the personal representative of XY late of *etc.*, who died on the —— day of —— 19— and whose Will was proved by me on the —— day of —— 19— in the [Principal] Probate Registry do this —— day of —— 19— hereby:—

1. As personal representative of the said XY deceased assent to the vesting in CD of *etc.*, of ALL THAT the property situate at and known as *etc.*, for all the estate and interest of the said XY at the time of his death

2. Declare that I have not previously hereto given or made any assent or conveyance in respect of any legal estate in or affecting the property hereby assured or any part thereof

3. Acknowledge the right of the said CD to the production of the probate of the said Will (the possession of which is retained by me) and to delivery of copies thereof

AS WITNESS, *etc.*

FORM 5

A "Table A" for Bahamian Settlements (*a*)

(Drafted by Timothy Jones, Barrister-at-Law)

THE SCHEDULE BEFORE REFERRED TO

Additional Trusts Powers and Provisions

Trust for sale and investment.

1. (a) The Trustees shall hold any real or immovable property comprised in the Trust Fund UPON TRUST to sell the same with

(*a*) This form is drafted as a schedule to be added to settlements made under Bahamian law. Its purpose is the same as the "Table A" for English settlements already published as Form 24 (1958) 22 Conv.(N.S.) p. 750 (Sept.–Oct.).

A growing number of settlements are drafted in this country to take effect under the law of the Bahamas and of other parts of the Scheduled Territories, and the usual practice is to draft an English settlement and send the draft abroad to be added to by a practitioner in the foreign law. The draft is returned with a number of additions, inserted to meet local requirements, and the English draftsman then has to try to harmonise these with the language of the original draft. This often results in an overlapping of the original and the added clauses, and some confusion of phraseology between them. It is simpler and speedier to provide the foreign practitioner with a complete draft in the first place, which he can approve with few amendments.

The provisions of the present form have been approved by several trustee companies in the Bahamas and their legal advisers there. They are drawn from two sources—Form 24 referred to above (the "Table A" for English settlements), and the enabling provisions of the English 1925 property legislation which are not in force in the Bahamas. Those from the latter source—the purely "Bahamian" provisions of the form—are printed in italics. So far as is relevant to settlements, Bahamian law consists of English common law and equity, certain English statutes which have been declared to be in force (*e.g.*, the Trustee Act, 1893) and certain local Conveyancing and Law of Property Acts (corresponding roughly to the English property legislation in force before 1926).

With regard to the provisions drawn from Form 24, reference should be made to the notes to the corresponding provisions of that Form (22 Conv.(N.S.) pp. 750–759).

The only special provisions required in the body of the settlement (apart from the clause incorporating the Schedule: see 22 Conv.(N.S.) p. 750, note (a)) will be (1) a clause declaring that the settlement is to be construed and take effect in accordance with the law of the Bahama Islands, and (2) in cases where there is to be an ultimate trust for the

power to postpone the sale thereof or of any part thereof for such period as they shall in their discretion think fit AND shall hold all other investments comprised in the Trust Fund UPON TRUST at their discretion either to retain the same in the existing state thereof for such period as they shall think fit or at their discretion to sell the same or any part thereof

(b) The Trustees shall hold the net proceeds of any sale of investments comprised in the Trust Fund and all other moneys held or received by them as capital money UPON TRUST to invest the same at their discretion in any investments of any nature hereby authorised

(c) The Trustees shall have power to vary or transpose any investments so made for or into any others of any nature hereby authorised

Trust of additional property.

2. (a) Any investments or capital moneys or income hereafter transferred or paid to the Trustees by or pursuant to the direction of the Settlor at any time before the whole of the Trust Fund has become indefeasibly vested in possession in some persons or person of full age shall in the absence of any contrary direction be held by the Trustees upon the trusts hereof (in the case of investments or capital moneys) as an accretion to the capital of the Trust Fund (including any share thereof already vested in possession) and as one fund with such capital for all purposes or (in the case of income) as part of the income of the Trust Fund (including any such share thereof as aforesaid)

(b) The foregoing sub-paragraph shall apply to any investments or capital moneys or income transferred or paid to the Trustees pursuant to any trust or direction or in exercise of any power contained or implied in any settlement will codicil or other disposition made by the Settlor in like manner as it applies to investments or capital moneys or income transferred or paid by or pursuant to the direction of the Settlor

(c) Where the context admits references herein to the Trust Fund or to the income thereof shall respectively include any

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next-of-kin of, *e.g.*, the Settlor, a provision making it clear that for this purpose the Settlor is to be treated as dying domiciled in the Bahamas, and the persons who are to take are those who would take under the law relating to the distribution of personal estate.

investments or capital moneys which may become liable by virtue of this paragraph to be held as an accretion to the capital of the Trust Fund and the investments and capital moneys from time to time respecting the same and any income which may so become liable to be held as part of the income of the Trust Fund

Powers of investment.

3. (a) Moneys requiring investment hereunder may at the discretion of the Trustees be invested in the acquisition or upon the security of any investments of whatsoever nature and wheresoever situate (whether or not authorised by law for the investment of trust moneys and including the acquisition of any property whatsoever and wheresoever situate and whether movable or immovable) or upon personal credit or security to the intent that the Trustees shall have the same powers of investing such moneys as if they were absolutely and beneficially entitled thereto

(b) The acquisition of any immovable property or chattels for residence therein or occupation or use and enjoyment *in specie* by any person interested in possession in the income of the moneys used on such acquisition (including a person to whom such income may be paid in exercise of the Trustees' discretion) shall be deemed to be an investment of such moneys

(c) The acquisition of any reversionary interest or any policy or securities or other investments not producing income or in respect of which no dividend interest or rent is payable shall be deemed to be an authorised investment of trust moneys

(d) The acquisition of any annuity or policy or securities or other investments being of a wasting nature shall be deemed to be an authorised investment of trust moneys

Provisions as to apportionments to capital and income.

4. (a) Where any such reversionary interest policy security or investment as is described in sub-paragraph (c) of the last foregoing paragraph of this Schedule is comprised in the Trust Fund or where any security comprised therein is sold with the right to receive the dividend or interest accrued or accruing thereon no part of any accretion to the value thereof or of any premium or bonus or other sum (whether in respect of arrears of or prospective dividend or interest or income or otherwise) which accrues or is payable when the same falls into possession

or on the redemption or maturity thereof or on repayment of the capital moneys thereby secured or on the sale or disposal thereof shall be apportionable to or be treated as income

(b) Where any such annuity policy security or investment as is described in sub-paragraph (d) of the last foregoing paragraph of this Schedule is comprised in the Trust Fund no part of any income or of any other periodical sums received in respect thereof (whether or not by way of repayment of capital by instalments) shall be apportionable to or treated as capital

(c) The Trustees shall have power to make any such investment as is mentioned in the said sub-paragraphs (c) or (d) notwithstanding that the making thereof may affect or alter *inter se* the interests of the persons respectively interested in capital and income hereunder

Bearer securities.

5. (a) *The Trustees may invest trust moneys in securities payable to bearer and may deposit the same for safe custody and collection of income with a banker or banking company*

(b) *The Trustees shall not be responsible for any loss incurred by reason of such deposit and any sum payable in respect of such deposit or collection shall be paid out of the income of the Trust Fund*

Powers supplementary to investment powers.

6. (a) *Where any securities of a company are comprised in the Trust Fund the Trustees may concur in any scheme or arrangement*

(i) *for the reconstruction of the company*

(ii) *for the sale of all or any part of the property and undertaking of the company to another company*

(iii) *for the amalgamation of the company with another company*

(iv) *for the release modification or variation of any rights privileges or liabilities attached to the securities or any of them*

in like manner as if they were entitled to such securities beneficially with power to accept any securities of any denomination or description of the reconstructed or purchasing or new company in lieu of or in exchange for all or any of the first-mentioned securities and the Trustees shall not be responsible

for any loss occasioned by any act or thing so done in good faith and may retain any securities so accepted as aforesaid for any period for which they could have properly retained the original securities

(b) *If any conditional or preferential right to subscribe for any securities in any company is offered to the Trustees in respect of ony holding in such company they may as to all or any of such securities either exercise such right and apply capital money comprised in the Trust Fund in payment of the consideration or renounce such right or assign for the best consideration that can be reasonably obtained the benefit of such right or the title thereto to any person without being responsible for any loss occasioned by any act or thing so done by them in good faith Provided that the consideration for any such assignment shall be held as capital money*

(c) *The Trustees may apply capital money in payment of the calls on any shares comprised in the Trust Fund*

Power to raise money.

7. *Where the Trustees are authorised hereby or by law to pay or apply capital money for any purpose or in any manner they shall have power to raise the money required by sale conversion calling in or mortgage of all or any part of the Trust Fund in such manner as they shall in their discretion think fit*

Deposit of documents.

8. *The Trustees may deposit any documents held by them with any banker or banking company or any other company whose business includes the undertaking of the safe custody of documents and any sum payable in respect of such deposit shall be paid out of the income of the Trust Fund*

Valuations.

9. *The Trustees may for the purpose of executing any trust or power vested in or exercisable by them from time to time (by duly qualified agents) ascertain and fix the value of any part of the Trust Fund in such manner as they think proper and any valuation so made in good faith shall be binding upon all persons interested hereunder*

Audit.

10. *The Trustees may in their absolute discretion from time to time but not more than once in every year unless they see special reason therefor cause the accounts of the Trust Fund*

to be examined or audited by an independent accountant and shall for that purpose produce such vouchers and give such information to him as he may require and the costs of such examination or audit including the fee of the auditor shall be paid out of the income of the Trust Fund

Employment of agents.

11. *The Trustees may instead of acting personally employ and pay an agent whether a solicitor banker stockbroker or other person to transact any business or do any act required to be transacted or done in the execution of the trusts hereof including the receipt and payment of money and shall be entitled to be allowed and paid all charges and expenses so incurred and shall not be responsible for the default of any such agent if employed in good faith*

Power to hold investments in the names of nominees.

12. The Trustees shall have power to transfer any investments comprised in the Trust Fund (including securities payable to bearer) to any person (whether or not being one of the Trustees) in any part of the world with or without the right to receive the income thereof so as to be held by or in the name of or under the legal control of such person as nominee for the Trustees and may give directions to such person (in conformity with the other trusts powers and provisions hereof) as to any dealing therewith and as to the payment of the income thereof and in such case

(a) the person to whom the investments are so transferred shall not (unless he is one of the Trustees) be concerned with the trusts hereof or be responsible for any loss caused or breach of trust occasioned by any dealing with the same or any payment of the income thereof made at the direction of the Trustees whether he has notice of the trusts hereof or not

(b) the Trustees shall not be responsible for any default of such person or for any loss incurred in consequence of any exercise of the foregoing powers if exercised in good faith and shall be entitled to be allowed and paid all remuneration and expenses payable to or incurred by such person in connection with the holding of or any dealing with the said investments or the payment of the income thereof

Provisions as to land (*b*).

13. Where the Trust Fund includes any real or immovable property or the prospective proceeds of sale of any real or immovable property (such real or immovable property being in this paragraph referred to as "the land")

(a) *The Trustees may lease the land or any part thereof for any purpose whatsoever and whether involving waste or not and for any term whatsoever and either wholly or partly in consideration of a rent (whether fixed or variable) or fine or premium or the erection improvement or repair or an agreement to erect improve or repair buildings on the land and may accept (with or without consideration) a surrender of any lease of the land or any part thereof*

(b) *The Trustees may in executing any trust or power of sale sell the land or any part thereof either wholly or partly in consideration of an annual sum payable either in perpetuity or for any term (whether definite or indefinite) and being either reserved out of the land sold or secured in such other manner as the Trustees shall think fit*

(c) *The Trustees may in executing any trust or power of sale or leasing*

(i) *sell or lease any part of the land whether the division is horizontal or vertical or made in any other way*

(ii) *sell or lease or reserve any easement or right or privilege over the land or any part thereof*

(iii) *sell or lease or except or reserve any timber or mines or minerals on or in or under the land or any part thereof together with any easements rights or privileges of cutting or working (as the case may be) and carrying away the same respectively or otherwise incident to or connected with forestry or mining purposes (as the case may be)*

(iv) *impose and make binding for the benefit of any part of the land sold or leased any restrictions or stipulations as to user or otherwise affecting any part of the land retained*

(v) *accept in exchange for the land or any part thereof*

(*b*) It should be noted that sub-paragraphs (a) to (f) give rather wider powers than the corresponding provisions of the Settled Land Act, 1925, and the Trustee Act, 1925.

to be sold or leased (either with or without any money paid or received for equality of exchange) any other real or immovable property or any lease thereof

(vi) *enter into any contract or grant any option for the sale or leasing of the land or any part thereof or otherwise for the exercise by the Trustees of any of the foregoing powers of this paragraph*

(d) *Where under any lease the lessee thereunder is entitled to work and carry away any minerals in or under the land one fourth part of the rent thereby reserved shall be deemed to form part of the income of the Trust Fund and the remaining three fourth parts thereof shall be set aside and held as capital money*

(e) *Except as provided by sub-paragraph* (d) *hereof the whole of any rent reserved by any lease of the land or any part thereof and also the whole of any such annual sum as is referred to in sub-paragraph* (b) *hereof shall be deemed to form part of the income of the Trust Fund*

(f) *All other moneys received as consideration for any sale or leasing in execution of any trust or power shall be deemed to be and be held as capital moneys*

(g) The Trustees shall not be bound to see nor be liable or accountable for omitting or neglecting to see to the repair or insurance of any buildings on the land or to the payment of any outgoings in respect thereof but may repair and insure any such buildings in such manner and to such extent as they shall think fit and pay out of the income of the Trust Fund the costs of all such repairs and of effecting and keeping up any such insurance and any such outgoings as aforesaid in priority to any other trusts affecting the said income

(h) The Trustees may from time to time expend capital money comprised in the Trust Fund in erecting demolishing and rebuilding and making alterations and improvements to any buildings on the land or any part thereof (including the provision and installation of fixtures whether by way of replacement of obsolete or worn-out fixtures or otherwise) to such extent and in such manner as they shall think fit and any certificate in writing of any architect or surveyor employed

by the Trustees to the effect that any work specified in such certificate is or includes an alteration or an improvement to any such building shall be conclusive as between the Trustees and all persons interested hereunder that any capital money expended on such work was properly so expended in exercise of this power

Provisions as to chattels.

14. Where the Trust Fund includes any chattels or the prospective proceeds of sale of any chattels

(a) The Trustees shall have power to lend or let or hire any of such chattels to any person (whether or not being a person interested hereunder) either gratuitously or for such consideration and upon such terms and for such period as the Trustees may in their discretion think fit

(b) The Trustees shall not be bound to see nor be liable or accountable for omitting or neglecting to see to the repair or insurance of the chattels and where any chattels are lent let or hired to any other person or any other person is lawfully permitted to use and enjoy any chattels *in specie* the Trustees shall not be responsible for any loss incurred through any damage to the same caused by or through any sale or conversion thereof made by such person or otherwise incurred through any neglect or default of such person

Power to permit enjoyment of property *in specie*.

15. The Trustees shall have power to permit any person interested in possession in the income of any immovable property or chattels which or the prospective proceeds of sale of which are included in the Trust Fund or any person who would be so interested if the same were producing income or any person to whom such income might be paid in exercise of the Trustees' discretion to reside in or occupy or use and enjoy *in specie* such immovable property or chattels either rent-free or otherwise and upon such terms and for such period as the Trustees may in their discretion think fit

Power of appropriation.

16. The Trustees shall have power to appropriate any part of the Trust Fund in its existing state in or towards satisfaction of any share of the Trust Fund to which any person is actually or contingently entitled (whether or not subject to any prior trust or power) or which otherwise is or may become held on trusts distinct from those relating to the residue of the Trust

Fund at such value and in such manner as the Trustees shall in their discretion think fit and any appropriation so made shall be binding on all persons in any manner interested hereunder

17. *If and so long as any share of the Trust Fund is held in trust (either as to capital or income) for any person who is an infant and unmarried for any interest whatsoever (whether vested or contingent and whether or not liable to be defeated by any exercise of any power) the Trustees shall stand possessed of the income of such share accruing until such person attains the age of 21 years or marries or dies or until his interest therein ceases (whichever shall first occur) if and so far as such income is not disposed of by or in exercise of any prior trust or power but otherwise notwithstanding the trust in favour of such person and notwithstanding any such prior trust or power or any exercise of any such power upon the trusts following namely* Power of maintenance (c).

(a) *Subject as provided in sub-paragraph* (b) *hereof the Trustees shall accumulate the said income in the way of compound interest by investing the same and the resulting income thereof until such person attains the age of 21 years or marries or dies (whichever shall first occur) and shall hold all such accumulations*

(i) *if and when such person attains the age of 21 years or marries under that age then* IN TRUST *for him absolutely or*

(ii) *if such person dies without attaining the age of 21 years or marrying then as an accretion to the capital of the Trust Fund and as one fund with such capital for all purposes*

(b) *Provided always that the Trustees may while such person is an infant and unmarried pay or apply any income so liable to be accumulated to or for the maintenance or personal support or otherwise for the benefit of such person at such times and in such manner as the Trustees shall in their discretion think fit in lieu of accumulating the same and may so pay or apply*

(c) This is wider than section 32 of the Trustee Act, 1925, in that the whole amount of the presumptive share may be advanced, and no consents are made requisite.

any such accumulations as aforesaid as if they were income of the then current year

Power of advancement.

18. *Where any share of the capital of the Trust Fund is held in trust for any person for any interest whatsoever (whether vested or contingent and whether or not subject to any prior trust or power and whether or not liable to be defeated or diminished by any exercise of any power or in any other event but not being an interest which can only become vested in possession if some other person already in existence dies without attaining a prior vested interest in such capital) the Trustees may at any times or time pay or apply any capital money comprised in the Trust Fund to or for the advancement or benefit of such person in such manner as they may in their discretion think fit notwithstanding any prior trust or power affecting such capital money Provided nevertheless that*

(a) *the money so paid or applied to or for the advancement or benefit of such person (together with any moneys previously so paid or applied) shall not exceed in amount the then presumptive amount of his said share*

(b) *if such person is or becomes absolutely and indefeasibly entitled to any share of the capital of the Trust Fund the aggregate of all moneys so paid or applied shall be brought into account as part of such share*

Power to appoint investments by way of advancement.

19. Where the Trustees have power to apply capital money for the advancement or benefit of any person they may (in lieu of applying capital money) appoint by instrument in writing that the Trust Fund or any specified part thereof shall be held in its existing state upon trust to transfer the same to such person for his own absolute use and benefit freed and discharged from the trusts hereof and shall upon making such appointment forthwith transfer accordingly the property so appointed

Provided always that the value at the time of the appointment of the property so appointed shall not exceed the amount of capital money properly applicable for the benefit of such person pursuant to the power and if capital money applied for his benefit pursuant thereto would in some event become liable to be brought into account in any manner then an amount equal to the said value of the said property shall be brought into

account in the same event and in the same manner and no such appointment shall be made without such consent (if any) as would have been requisite for the application of capital money for the benefit of such person pursuant to the power

Power to make payment and transfers to the trustees of other trusts (*d*).

20. (a) Where the Trustees have power to apply capital money for the advancement or benefit of any person or have a power or discretion to apply income for the benefit of any person the payment of any capital money or income (as the case may be) to the trustees of any other trust under which such person is interested shall (but only if the Trustees in their discretion consider the payment to be for his benefit) be deemed to be a proper application of capital money or income (as the case may be) pursuant to the power or discretion

(b) Where the Trustees have power under the last foregoing paragraph of this Schedule to appoint any property in favour of any person in the manner therein mentioned they may in lieu of appointing the said property in the manner aforesaid (but subject to the same provisions and with the like consequences as in the case of such appointment and only if the Trustees in their discretion consider it for the benefit of such person so to do) appoint by instrument in writing that the said property shall be held in its existing state upon trust to transfer the same to the trustees of any other trust under which such person is interested freed and discharged from the trusts hereof and shall upon making such appointment forthwith transfer accordingly the property so appointed

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(*d*) This provision can be used, in conjunction with express powers of applying capital money for the benefit of the beneficiaries, for the purpose of "changing the proper law" of the settlement. If it became desirable (*e.g.*, for fiscal reasons) to transfer the administration of the settled funds to some other country, the Trustees could arrange for a fresh settlement to be executed under the law of the new country, and then transfer the funds to the trustees of the new settlement. This is probably a safer method than relying on a clause which purports to empower the Trustees to change the proper law of the settlement by making a declaration to that effect. A clause of this type is of doubtful effect, and it has already attracted raised eyebrows in *I. R. C.* v. *Kenmare* [1956] Ch. 220, 483, at pp. 226 and 491.

For cases where the Settlor is to be excluded from any benefit, see the note to the corresponding provision in Form 24 referred to above (22 Conv.(N.S.) pp. 755–756, note (*e*)).

(c) For the purposes of this paragraph "trust" shall mean any trust created by any settlement declaration of trust will codicil or other instrument under the law in force in any part of the world and a person shall be deemed to be interested under a trust (whether or not he is the principal beneficiary thereunder and notwithstanding that his interest is liable to be affected or defeated by any exercise of any power vested in any person) if any capital or income comprised in the trust is or may become liable to be transferred paid applied or appointed to him or for his benefit either pursuant to the terms of the trust or in consequence of an exercise of any power or discretion thereby conferred on any person

(d) The provisions of this paragraph shall have effect notwithstanding any rule of law or equity restricting the delegation of a power or discretion

(e) Provided nevertheless that the power conferred by this paragraph shall not authorise any payment or transfer of any capital money or income or property to the trustees of another trust if the persons interested thereunder include any person who has disclaimed his interest as an object of the said power (whether wholly or with respect to any part of the capital money or income or property to be paid or transferred) under the next following paragraph

Power to disclaim benefits.

21. Any person of full age to whom or for whose benefit any capital or income may be liable to be appointed transferred paid or applied by or in consequence of an exercise of any power or discretion vested in the Trustees or in any other person may by deed revocably or irrevocably disclaim his interest as an object of such power or discretion either wholly or with respect to any specified part or share of such capital or income and in such case the said power or discretion shall forthwith (but if the disclaimer be revocable then only for so long as the same remains unrevoked) cease to be exercisable for appointing transferring paying or applying any capital or income of the Trust Fund (or any of the specified part or share of such capital or income as the case may be) to or for the benefit in any manner of such person anything elsewhere herein contained to the contrary notwithstanding

Receipts of married infants.

22. *The receipt of a married infant for any investments or property transferred to him or for any income or moneys paid or applied to him or for his benefit pursuant to any trust or power herein contained shall be a sufficient discharge to the Trustees therefor*

Payments to parents or guardians.

23. *Where the Trustees are authorised or required to pay or apply any income or moneys to or for the benefit of any person who is an infant and unmarried the Trustees may pay the same to any parent or guardian of such person without seeing to the application thereof or apply the same in such manner as may be directed in writing by such parent or guardian and the receipt of such parent or guardian shall be a sufficient discharge to the Trustees for any income or moneys so paid or applied*

Provision for trustees' remuneration (*e*).

24. (a) Any trustee for the time being hereof being a solicitor or other individual engaged in any profession or business shall be entitled to charge and be paid all usual professional or other charges for business done and time spent and services rendered by him or his firm in the execution of the trusts and powers hereof whether in the ordinary course of his profession or business or not and although not of a nature requiring the employment of a solicitor or other professional person

(b) The power of appointing a new or additional trustee hereof shall include power to appoint any corporation to be a trustee hereof with such powers rights and benefits as to remuneration or otherwise as the person or persons making the appointment shall in his or their discretion think fit and any corporation acting as a trustee hereof shall have such powers rights and benefits as to remuneration or otherwise as may so have been appointed or (in any other case) as may have been specified in the corporation's published terms and conditions as to the acceptance of trusts current at the date when it commenced so to act

Provision as to trustee-directors' emoluments (*f*).

25. No trustee hereof shall be liable to account for any remuneration or other profit received by him in consequence

(*e*) For cases where the Settlor is to be excluded from any benefit, see the note to the corresponding provision in Form 24 referred to above (22 Conv.(N.S.) pp. 757–758, note (*g*)).

(*f*) A statutory power of appointing new (as distinct from additional) trustees is conferred by the Trustee Act, 1893, s. 10.

of his acting as or being appointed to be a director or other officer or servant of any company notwithstanding that his appointment was procured by an exercise by him or by the Trustees of voting rights attached to securities comprised in the Trust Fund or by any abstention from exercising such voting rights

Appointment and discharge of trustees.

26. (a) *Subject as provided in this paragraph any person for the time being entitled in the proper case to appoint a new trustee hereof in the place of a deceased trustee may (unless there is any other person who has a prior right so to do and who is able and willing to act) by writing appoint any person (whether or not being the person exercising this power) to be an additional trustee hereof and any person so appointed shall become a trustee hereof in like manner as if he had been duly appointed in the place of a deceased trustee (f)*

(b) *Where a corporation being a trustee hereof is or has been dissolved such corporation shall for the purposes of any power of appointing new trustees hereof be deemed to be and to have been from the date of the dissolution incapable of acting in the trusts or powers reposed in or conferred on such corporation*

(c) *No appointment of any new or additional trustee of the Trust Fund or any part thereof shall be made which would increase beyond four the number of the trustees of the Trust Fund or of such part thereof for the time being*

Provisions as to trustees' powers and discretions.

27. (a) The Trustees shall exercise each and all of the powers and discretions vested in them in such manner as they shall think most for the benefit of the persons actually or prospectively interested hereunder or of any one or more exclusively of the others or other of such persons and in exercising any power or discretion for the benefit of any one or more of such persons may ignore entirely the interests of all the others or other of them

(b) Subject thereto every discretion vested in the Trustees shall be absolute and uncontrolled and every power vested in them shall be exercisable at their absolute and uncontrolled discretion and the Trustees shall have the like discretion in deciding whether or not to exercise any such power

Provision limiting powers and discretions.

28. Notwithstanding anything in this Schedule or elsewhere herein contained no discretion or power hereby conferred on the Trustees or on any other person shall be exercisable at any time after the expiration of twenty-one years from and after the death of the last survivor of the persons now living who are parties hereto or are otherwise referred to by name herein and the issue now living of his late Majesty King Edward the Seventh

Interpretation clause.

29. (a) In this Schedule and elsewhere herein where the context so admits

(i) "investments" includes any property of any kind whatsoever other than cash

(ii) "securities" includes stocks funds and shares

(iii) "income" includes rents and profits

(iv) *"person" includes a corporation*

(v) *the singular includes the plural and vice versa*

(vi) *the masculine includes the feminine and vice versa*

(vii) references to the issue of any person include the children and remoter issue of such person

(b) The marginal notes to this Schedule are inserted only for references to the provisions of this Schedule and shall not affect the construction of such provisions

(c) The powers contained in this Schedule are in addition to the powers otherwise vested in the Trustees

FORM 6

Settlement Clauses for Controlling Trustees' Powers (*a*)

(Drafted by Timothy Jones, Barrister-at-Law)

I

Clause for restricting the scope of a discretionary trust of income.

Notwithstanding anything to the contrary herein contained the Settlor may at any times or time by deed revocably or

(*a*) Modern settlements need considerable flexibility, and consequently wide powers and discretions vested in the Trustees, usually for the potential benefit of a large class of beneficiaries. At the same time the Settlor may wish, without being himself a trustee, to retain some control

irrevocably declare that any person or class of persons (whether in existence or not) specified in such deed shall cease to be an object or objects of the discretionary trust in Clause —— hereof and after the making of any such declaration (but if the same is revocable then only for so long as the same remains unrevoked) no income of the Trust Fund shall be paid or applied pursuant to the said trust to or for the benefit of the person or class of persons to whom the declaration relates

[Provided nevertheless that no such declaration shall have any effect if (but for this proviso) the effect thereof would be to reduce to less than two the number of persons in existence for the time being to whom or for whose benefit income may be paid or applied pursuant to the said trust] (*b*)

II

Clause for restricting powers of advancing or paying out capital.

Notwithstanding anything to the contrary herein contained the Settlor may at any times or time with respect to any of the

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over the exercise of the Trustees' powers. Moreover, recent developments in tax law (*e.g.*, the Finance Act, 1958, ss. 21 and 22) show the desirability of being able to modify the Trustees' discretionary powers.

Form I enables the Settlor to restrict (either temporarily or permanently) the class of objects of a discretionary trust of income.

Form II enables him to place a variety of restrictions on the Trustees' powers of advancing or paying capital to the beneficiaries, or to extinguish these powers altogether.

Form III is for the case where there are friends or members of the family whom the Settlor would normally wish to be his trustees, but who are unwilling to take on the full burden. They are appointed instead "protectors of the settlement" and given a veto over some of the Trustees' powers. Since their consent is made a condition precedent it is essential that there should always be some protector in existence, and provisions are therefore included for making them a self-perpetuating body like the Trustees.

This Form can also be used where the Settlor wishes to have the ultimate control of the settled funds vested in persons resident outside the Scheduled Territories. Exchange control permission is not normally given for non-resident trustees, but no permission is needed for non-resident protectors since no property becomes vested in them. The draftsman is indebted for this suggestion to Mr. John Foster, Q.C.

The use of Forms I or II might possibly result in a passing on the Settlor's death under section 2 (1) (d) of the Finance Act, 1894, and it would be safest for him to release these powers at some time before his death.

(*b*) The absence of this proviso might enable the Settlor to revoke the discretionary trust altogether.

following powers namely [here refer to the powers in question (*c*)] by deed revocably or irrevocably declare that such power shall either be forthwith wholly extinguished or shall thenceforward be exercisable subject to such restrictions (either as to the person or class of persons whether in existence or not for whose benefit the same may be exercised or as to the extent to which or the parts or shares of the Trust Fund over which or the period during which the same may be exercised for the benefit of any person or class of persons or otherwise howsoever) as may be specified in such deed and after the making of any such declaration (but if the same is revocable then only for so long as the same remains unrevoked) the power to which the declaration relates shall either be forthwith wholly extinguished and cease to be exercisable or (as the case may be) shall thenceforward be exercisable subject to the restrictions so specified

Provided always that no such declaration shall authorise any exercise of any such power for the benefit of any person who is not an object of the power

III

Condition requiring the consent of protectors of the settlement.

(a) Notwithstanding anything to the contrary herein contained no exercise (*d*) of any of the following powers namely [here refer to the powers in question] shall be made or have any effect unless made with the previous written consent of [one of] (*e*) the persons who are or the person who is for the time being the protectors or protector of the Settlement by virtue of this Clause

(b) Subject as hereinafter provided the protectors or protector of the Settlement (in this Clause referred to as protectors) shall

(*c*) Specific reference should be made to any express powers of paying capital money, any other provisions extending those powers (see, *e.g.*, paragraphs 10 and 11 of Form 24 (1958) 22 Conv.(N.S.) p. 750 (Sept.–Oct.)), and section 32 of the Trustee Act, 1925.

(*d*) If this Form is used for restricting a power exercisable by deed or will (*e.g.*, by a beneficiary) it is suggested that the words "(otherwise than by will or codicil)" might need to be inserted here.

(*e*) It is probably more convenient in practice to make the consent of any one protector sufficient.

be the following persons or the survivors or survivor of them for the time being namely:

(1)
(2) } [names of first protectors]

(3) Any person appointed a protector pursuant to paragraph (c) of this Clause

(c) The protectors or if there is no protector for the time being then the Trustees may at any times or time by deed appoint any person (not being one of the Trustees) to be a protector

(d) If any protector becomes unable to act the others or other of the protectors or if there is no other protector or no other protector able to act for the time being then the Trustees may by deed remove the protector so becoming unable to act and thereupon he shall cease to be a protector and for this purpose a protector shall be deemed to have become unable to act if either

(i) he would (if a trustee hereof) be unfit to act or be incapable of acting in the trusts hereof within the meaning of subsection (1) of section 36 of the Trustee Act 1925 (*f*) or

(ii) by reason of any state of war or civil disturbance or imprisonment or disappearance or otherwise it has become impossible impracticable or unlawful to obtain his written consent of any purpose of paragraph (a) of this Clause

(e) Where a corporation who is a protector is dissolved the corporation shall cease to be a protector on the date of such dissolution

(f) Any protector (not being a sole protector) may by deed declare that he is discharged from his office and shall thereupon cease to be a protector

(g) Each protector shall have an absolute and uncontrolled

(*f*) In the case of a foreign settlement where it is desirable to avoid any reference to an English statute paragraph (i) can be omitted, and instead the phrase could read: "if by reason of mental or physical infirmity or any state of war . . ." etc. (continuing as in paragraph (ii)).

discretion in deciding whether to give or withhold his consent required for any purpose of paragraph (a) of this Clause and may exercise such discretion upon consideration of such facts or information as he may think fit and no protector shall be liable or accountable in any manner for any exercise of such discretion [and the rules of equity in relation to dealings and transactions between the donee of a power and any object of the power in whose favour the same may be exercised shall not apply to dealings and transactions between any protector and any person interested hereunder upon the occasion of the protector giving or withholding any such consent] (*g*).

FORM 7

Settlement on Trust for Sale to carry out the sale of a House in consideration of a weekly sum to the Settlor during his life, reserving a right for the Settlor to reside in the house during his life, and an option to repurchase the house if default is made in payment of the weekly sum

I

Conveyance on Trust for Sale (*a*)

(*Drafted by E. H. Bodkin, of Lincoln's Inn*)

THIS CONVEYANCE is made the —— day of —— 19 — BETWEEN A of *etc.* (hereinafter called "the Settlor") of the one part and B of *etc.* and C of *etc.* (hereinafter called "the Trustees") of the other part Parties.

WHEREAS the Settlor is the estate owner in respect of the fee Recital of ownership.

(*g*) This passage is adapted from section 37 of the Fines and Recoveries Act, 1833, designed to negative for this purpose the doctrine of fraud on a power. Probably it will only be required where a protector is likely to be one of the beneficiaries.

(*a*) The stamp duty should be adjudicated. The option to repurchase will be a security for the payment of the weekly sum. There will be no rent out of which it can be made payable. Estate duty will be payable on the Settlor's death outside the five-year period, as there is a reservation to him of an interest. As to the desirability of the machinery suggested by these Forms, see *Bannister* v. *Bannister* [1948] 2 All E.R. 133.

simple in possession of the property hereinafter assured and is desirous of settling the same in manner hereinafter appearing

NOW THIS DEED WITNESSETH as follows:—

Conveyance to Trustees.

1. IN pursuance of the said desire and for the consideration mentioned in the Settlement hereinafter referred to the Settlor AS SETTLOR hereby conveys unto the Trustees ALL THAT *etc.* TO HOLD unto the Trustees in fee simple

Trust for sale and trusts of proceeds.

2. THE Trustees shall stand possessed of the said property hereby assured UPON TRUST that the Trustees shall with the consent in writing of the Settlor D of *etc.* and E of *etc.* during their joint lives and of the survivors and survivor of them during their or his lives or life and after the death of such survivor at the discretion of the Trustees to sell the said property or any part thereof with full power to postpone the sale and shall stand possessed of the net proceeds of sale (after payment of costs) and of the net rents and profits until sale (after payment of all outgoings) Upon the Trusts and with and subject to the powers and provisions declared and contained concerning the same in a Settlement already prepared and intended to bear even date with this Conveyance and to be made between the Settlor of the first part the said D of the second part the said E of the third part and the Trustees of the fourth part

Power to appoint new trustees.

3. THE power of appointing a new trustee or new trustees of this Conveyance shall be vested in the Settlor the said D and the said E during their joint lives and in the survivors or survivor of them during their or his lives or life

IN WITNESS, *etc.*

II

Settlement

Parties.

THIS SETTLEMENT is made the —— day of —— 19— BETWEEN A of *etc.* (hereinafter called "the Settlor") of the first part D of *etc.* of the second part E of *etc.* of the third part and B of *etc.* and C of *etc.* (hereinafter called "the Trustees") of the fourth part (*b*)

(*b*) The lettering in the Conveyance is retained for simplicity.

WHEREAS:—

Recitals: Conveyance on Trust for Sale.

(1) By a Conveyance (hereinafter called "the Conveyance") bearing even date with but executed before this Settlement and made between the Settlor of the one part and the Trustees of the other part the Settlor conveyed certain freehold property at —— as the same is more particularly described in the Conveyance to the Trustees in fee simple UPON TRUST that the Trustees should with the consent in writing of the Settlor the said D and the said E during their joint lives and of the survivors and survivor of them during their or his lives or life and after the death of such survivor at the discretion of the Trustees sell the same or any part thereof with full power to postpone the sale and should stand possessed of the net proceeds of sale (after payment of costs) and of the net rents and profits until sale (after payment of outgoings) Upon the Trusts and with and subject to the powers and provisions declared and contained in a Settlement therein referred to being this Settlement

Consideration for Settlement.

(2) The Conveyance was expressed to be made in pursuance of the desire of the Settlor to settle the said property and for the consideration expressed in this Settlement

NOW THIS DEED WITNESSETH and it is hereby agreed and declared as follows:—

1. IN pursuance of the said desire and in consideration of the covenants on the part of the said D and E hereinafter contained the Settlor hereby directs and the Trustees hereby declare that they shall and will stand possessed of the said property comprised in the Conveyance and of the net moneys to arise under the recited trust for sale therein contained and any capital moneys arising under the Conveyance and of the net rents and profits until sale of the said property Upon the Trusts and with and subject to the powers and provisions hereinafter declared and contained concerning the same that is to say:—

Trustees to permit Settlor to reside.

(1) Subject and without prejudice to the recited trust for sale declared by the Conveyance and the immediate binding nature thereof the Trustees shall permit the Settlor to reside in the said property free of rent so long

as he desires until the sale or letting thereof subject to his keeping the same in good and tenantable repair and condition and paying all rates taxes and assessments payable in respect thereof (including Schedule A tax) and the costs of insuring the said property to the satisfaction of the Trustees

Covenant for payment of weekly sum to Settlor.

(2) The said D and E hereby jointly and severally covenant with the Settlor and as a separate covenant with the Trustees that they or their personal representatives will pay to the Settlor during the residue of his life the weekly sum of £—— such sum to be paid on ——day in each week and to commence from the date hereof

Option to Settlor to repurchase on default.

(3) If default shall be made for a continuous period of —— weeks in payment of the said weekly sum the Settlor (whether or not he shall be residing in the said property) shall have the option on notice in writing to the Trustees within —— weeks after such default of repurchasing the said property on payment to the Trustees on trust for the said D and E as tenants in common in equal shares or their respective personal representatives of the sum mentioned in the next sub-clause hereof and the said weekly sum shall upon such repurchase being duly completed cease to be payable

Purchase-money or repurchase.

(4) The sum to be paid for the repurchase of the said property shall be £—— (being the agreed value thereof) less the aggregate value of the instalments of the said weekly sum remaining presumptively payable having regard to the expectation of life of the Settlor to be reckoned according to the Government Tables and less any arrears of the said weekly sum

Ultimate trusts.

(5) Subject as aforesaid the net proceeds of sale of the said property and any capital money arising under the Conveyance and the net rents and profits of the said property until sale shall be held IN TRUST for the said D and E as tenants in common in equal shares [the Trustees shall stand possessed of the net proceeds of sale of the said property and any capital money arising under

the Conveyance UPON TRUST to pay the net rents profits and income thereof to the Settlor during his life and from and after his death shall stand possessed of the said net proceeds of sale and capital money and the net rents and profits until sale of the said property IN TRUST for the said D and E as tenants in common in equal shares] (*c*)

[2. IF the said D and E shall at any time purchase in the name of the Settlor from the Government or any public company an annuity of £—— for the residue of the life of the Settlor and all instalments of the said weekly sum shall have been paid up to the commencement of the said annuity the said weekly sum shall as from the commencement of the said annuity cease to be payable and the option of repurchase hereinbefore conferred on the Settlor shall forthwith cease to be exercisable but the other provisions hereof shall remain of full force and effect] Power to purchase an annuity.

3. THE power of appointing new trustees or a new trustee of this Settlement shall be vested in the Settlor the said D and the said E during their joint lives and in the survivors and survivor of them during their or his lives or life Power to appoint new Trustees.

IN WITNESS, *etc.*

FORM 8

Lease of a flat for 999 years at a premium (*a*).

(*Drafted by E. H. Bodkin, of Lincoln's Inn*)

THIS LEASE made the —— day of —— 19— BETWEEN A of etc. (hereinafter called "the Landlord" which expression Parties.

(*c*) If the settlor is to be given a life interest, an investment clause may be added.

(*a*) Owing to the uncertainty as to whether the burden of positive covenants can be made to run with the land, it is probably better to adopt the plan of leasing the flats for a long term rather than to sell them as freeholds. Positive covenants touching and concerning the land run with the land as between landlord and tenant, so this difficulty is overcome by granting long leases. The negative covenants can be made enforceable by the lessees *inter se* by creating a building scheme, as in the above form. It appears to be advisable to reserve a substantial rent and to provide for the landlord's indemnity against his liability on his covenants to repair

shall where the context so admits include the estate owner for the time being of the reversion of the premises hereby demised expectant on the term hereby granted) of the one part and B of etc. (hereinafter called "the Lessee" which expression shall where the context so admits include his executors administrators and assigns) of the other part

Recital of intention to create building scheme.

Whereas the Landlord being the estate owner in fee simple of the building known as —— Court —— Street —— in the County of —— (hereinafter called "the Mansion") is desirous of letting parts thereof as flats subject to the Regulations contained in the Schedule hereto to the intent that the lessee for the time being of each such flat may be able to enforce the observance of the said Regulations as against the lessee for the time being of every other flat in the Mansion

Now this deed witnesseth as follows:—

Demise.

1. In consideration of the sum of £—— now paid by the Lessee to the Landlord (the receipt and payment whereof the Landlord hereby acknowledges) and of the rent covenants and agreements on the part of the Lessee and the conditions hereinafter reserved and contained the Landlord hereby demises unto the Lessee

Parcels.

All that Flat or suite of rooms known as flat No. —— on the —— floor of the Mansion from the [lower edge of the joists of the floor] [foundations] upwards (including the outside walls from that level upwards and one half severed medially of the inside walls separating the flat from other flats) [but not the

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the structure and to insure, notwithstanding intending lessees would usually prefer that their liability to the Landlord should cease on payment of their premium. If the reversion is bound by onerous covenants without any corresponding benefit by way of rent, it may be unsaleable, with the result that on the landlord's death there would be an uncertain liability which could not be got rid of by sale, and which might result in keeping his estate open indefinitely. It may be wise for the landlord to register the covenants as a land charge against each lessee, since they are enforceable against prior lessees under the building scheme, and may perhaps not be covenants between a lessor and lessee within Class D (ii) of the Land Charges Act, 1925.

In the case of a large block of flats it is usually preferable to form a company to take over the block and lease the flats. But even if this course is pursued, the landlord's liability on the covenants would be equally important.

roof] (which premises are hereinafter referred to as "the Flat") TOGETHER WITH the following rights in common with the Landlord and the lessees of the other flats in the Mansion that is to say—

(1) The right to use for the purpose of access the entrance hall staircases lifts and passages leading to the Flat

(2) The right of free running and passage of water soil gas and electricity through the drains pipes and wires in the Mansion to and from the Flat

(3) The right to place dustbins in the rear of the Mansion and to affix aerials and telephone wires to any part of the outside of the Mansion

(4) The right to pass over and use for purposes of recreation the forecourt of the Mansion

TOGETHER ALSO with the benefit of the covenants entered into by the lessees of the other flats in the Mansion with the Landlord for the observance of the said Regulations

EXCEPT AND RESERVING unto the Landlord and the lessees of the other flats in the Mansion

(1) The free running and passage of water soil gas and electricity through the drains pipes and wires which now are or may at any time hereafter be in the Flat with power for the Landlord his servants and workmen at all reasonable times to enter the Flat for the purpose of inspecting repairing cleansing and renewing the said drains pipes and wires and also of painting and repairing the exterior and roof of the Mansion and the other flats therein and so that such works shall be done with despatch and that the Landlord shall forthwith make good all damage to the Flat and the fixtures and chattels therein

(2) The right of support and protection by the Flat of the other flats in the Mansion Habendum.

(All which premises are hereinafter called "the demised premises")

TO HOLD the same unto the Lessee from the —— day of —— 19— for the term of 999 years subject to the burden of the covenants already entered into by the Landlord with the

lessees of any other flats in the Mansion for the observance of the said Regulations

Reddendum. YIELDING AND PAYING during the said term hereby granted the rent of £—— to be paid without any deduction (except for Schedule A tax) by equal quarterly payments on the four usual quarter days the first of such payments to be made on the —— day of —— next

Lessee's covenants: 2. THE Lessee hereby covenants with the Landlord in manner following that is to say—

To pay rent; (1) That the Lessee will during the continuance of the term hereby granted pay the yearly rent hereby reserved and made payable at the times and in the manner at and in which the same is hereby reserved and made payable without any deduction except as aforesaid

To pay rates; (2) And will from time to time and at all times during the said term pay and discharge all rates taxes duties charges assessments and outgoings whatsoever (whether parliamentary parochial local or of any other description) which are now or may hereafter be assessed charged or imposed upon or payable in respect of the Flat or the owner or occupier in respect thereof (including if the Flat is not separately assessed thereto a due proportion of the water rate payable in respect of the Mansion excluding any flat separately assessed) such proportion to be determined by the Landlord on the basis that each flat in the Mansion is of equal value

To pay proportion of Schedule A tax; (3) And will in the event of the Flat not being separately assessed for Schedule A tax pay one —— part of the Schedule A tax payable in respect of any financial year falling in whole or in part during the term hereby granted in respect of the Mansion or repay to the Landlord or indemnify the Landlord against one —— part of the amount paid or payable by the Landlord (*b*)

To contribute to Landlord's expenses; (4) And will contribute one equal —— part of all moneys expended by the Landlord from time to time in the performance of his covenants contained in sub-clauses (2) (3) and (4) of clause 3 hereof such contribution to be paid quarterly on the

(*b*) Notwithstanding s. 18 of the Finance Act, 1957, this covenant appears to be advisable.

quarter days hereinbefore appointed for payment of the said rent

(5) And will keep the inside of the Flat and all cisterns boilers water and waste pipes taps sinks baths and lavatories and electric wires and fixtures therein in good repair condition and decoration and the chimneys swept — To repair;

(6) And will at the expiration or sooner determination of the said term quietly yield up unto the Landlord the Flat so repaired and in good condition and decoration and all fixtures of any kind now in or upon the same or which during the last seven years of the said term may be affixed or fastened to or upon the same — To yield up in repair;

(7) And will permit the Landlord or his agent twice or oftener in every year during the said term during seasonable hours in the daytime with or without workmen or others to enter the Flat to view the state of repair and condition thereof and at any time or times during the last seven years before the end or sooner determination of the term hereby granted to take an inventory of the fixtures therein and of all defects and wants of reparation and decoration then and there found and which the Lessee shall be liable to make good under the covenants hereinbefore contained to give or leave in the Flat notice in writing to the Lessee AND that the Lessee will within the period of three calendar months after such notice (or sooner if requisite) repair and make good the same according to such notice and the covenants in that behalf hereinbefore contained — To permit Landlord to enter and inspect;

(8) That if the Lessee shall at any time make default in the performance of the covenants on his part hereinbefore contained for or relating to the repair and decoration of the Flat the Lessee will permit the Landlord (but without prejudice to the right of re-entry hereinafter contained) to enter upon the Flat and repair and decorate the same at the Lessee's expense in accordance with the said covenants and the expenses of such repairs and decoration shall be paid by the Lessee to the Landlord on demand — To permit Landlord to repair in default by Lessee:

(9) That the Lessee will not without the written consent of the Landlord alter nor in any manner interfere with the construction of the Flat or cut alter or injure any of the walls — Not to alter;

partitions joists or floors thereof or the drains electric wires or pipes therein

Not to assign without consent;

(10) And will not assign transfer underlet part with nor share the possession or occupation of the demised premises or any part thereof (otherwise than by Will) without the previous consent in writing of the Landlord but so that such consent shall not be unreasonably arbitrarily or vexatiously withheld

To give notice of assignment;

(11) And will within three calendar months next after any absolute transfer assignment or devolution of his interest under this present Lease in the demised premises or any part thereof give notice in writing to the Landlord or his solicitor of such assignment transfer or devolution and of the name quality and place of abode of the transferee or assignee and will produce to him the instrument of such transfer assignment or devolution and pay to him a fee of £—— for the registration of such notice

Not to increase insurance premium.

(12) And will not do or suffer anything which may render any increased or extra premium payable for the insurance of the Mansion or which may make voidable any policy for such insurance

(13) And will pay all costs charges and expenses (including legal costs and surveyor's fees) incurred by the Landlord in or in contemplation of any proceedings under sections 146 and 147 of the Law of Property Act 1925 or under any statute amending or re-enacting the same

(14) And will abide by and observe the said Regulations in the said Schedule hereto

Landlord's covenants:

3. THE Landlord hereby covenants with the Lessee in manner following that is to say—

For quiet enjoyment;

(1) That the Lessee duly paying the rent hereby reserved and observing and performing the several covenants conditions and agreements herein contained and on his part to be performed and observed shall and may peaceably and quietly hold and enjoy the demised premises during the term hereby granted without any lawful interruption or disturbance from or by the Landlord his successors in title or any person or persons claiming under or in trust for him or them

To repair structure;

(2) That the Landlord will (subject to contribution by the Lessee as hereinbefore provided) at all times during the said

term keep the main walls and timbers roof chimneys stack-pipes and gutters of the Mansion (including the windows and window-frames of the Flat (*c*) and the drains gas and water pipes and electric wires used in common by the Lessee and the entrance hall staircases passages and lifts in good and substantial repair and decoration and the forecourt clean and tidy and the entrance hall staircases passages and lifts in proper order and condition and properly carpeted lighted and cleaned and will renew the lifts when necessary (*d*)

To pay rates on parts retained;

(3) And will at all times during the said term pay all rates taxes and outgoings (if any) payable in respect of or attributable to the parts of the Mansion over which the Lessee has rights of user hereunder

To insure;

(4) And will at all times during the said term (subject to contribution as aforesaid and unless such insurance shall be vitiated by the act of the Lessee or of the Lessee if any other flat in the Mansion) insure and keep insured the Mansion against loss or damage by fire and such other risks as the Landlord may deem necessary in some insurance office of repute in the sum of £—— at least and will wherever required produce to the Lessee the policy or policies of such insurance and the receipt for the last premium for the same And further that in case of destruction of or damage to the Mansion or any part thereof by fire will with all convenient speed spend and lay out all moneys received in respect of such insurance in rebuilding or reinstating in a good and substantial manner the premises so destroyed or damaged and in case such moneys shall be insufficient for such purpose will make good such deficiency out of his own moneys

To observe Regulations;

(5) That the Landlord as to the flats in the Mansion retained by him or which may come into his possession by the determination of the lease of a flat will at all times during the said term observe and perform the said Regulations in the said Schedule hereto

(*c*) See *Holiday Fellowship* v. *Viscount Hereford* [1959] 1 All E.R. 433.

(*d*) Any other services to be supplied, such as the provision of lift attendants and porters, should be added here. If the landlord is to supply gas or electricity through slot meters in the flat, he should covenant to do so, and the lessee should covenant to pay for them.

To insert Regulations in Leases.

(6) That every lease or tenancy agreement of a flat in the Mansion hereafter granted by the Landlord or the persons deriving title under him shall contain regulations to be observed by the lessee or tenant thereof similar to those contained in the said Schedule hereto

Proviso for Re-entry.

4. Provided always and these presents are upon this condition that if the said yearly rent hereby reserved or any part thereof shall at any time be in arrear and unpaid for 21 days after the same shall have become due (whether any formal or legal demand therefor shall have been made or not) or if the Lessee shall at any time fail or neglect to perform or observe any of the covenants conditions or agreements herein contained and on his part to be performed and observed [or if the Lessee while the demised premises or any part thereof shall remain vested in him shall become bankrupt or have a receiving order made against him or enter into any arrangement or composition for the benefit of his creditors or permit any execution to be levied on the demised premises] then and in any such case it shall be lawful for the Landlord or any persons duly authorised by him in that behalf into and upon the demised premises or any part thereof in the name of the whole to re-enter and the said premises peaceably to hold and enjoy henceforth as if these presents had not been made without prejudice to any right of action or remedy of the Landlord in respect of any antecedent breach of any of the covenants by the Lessee hereinbefore contained

Landlord not to be liable for defects.

[5. The Landlord shall not be liable or responsible for any damage suffered by the Lessee (whether personally or in respect of the Flat or any property of the Lessee therein) or any invitee or licensee of the Lessee through any defect in any fixture pipe drain wire staircase lift or thing in the Mansion or any part thereof (including the Flat)]

Arbitration clause.

6. If at any time hereafter any dispute doubt or question shall arise between the Landlord and the Lessee touching the construction meaning or effect of these presents or any clause or thing herein contained or their respective rights or liabilities under these presents or otherwise in relation to the premises every such dispute doubt or question shall be referred to two

arbitrators (one to be appointed by each party to the reference) or their umpire And the Arbitration Act 1950 or any statutory modification or re-enactment thereof for the time being in force shall apply to any arbitration pursuant hereto

[7. *Certificate of value if required*]

IN WITNESS, *etc.*

THE SCHEDULE ABOVE REFERRED TO

Regulations as to user of Flats

1. Not to do or suffer or permit to be done or suffered any act matter or thing which may be or become a nuisance or annoyance to the Landlord or the occupiers of any other flat in the Mansion (the use of a wireless television set or gramophone or music between the hours of midday and midnight so as not to be audible outside the Flat not to be considered a nuisance or annoyance within this covenant) and not to carry on or suffer to be carried on in the Flat any trade or business or use or suffer the Flat to be used for any illegal or immoral purpose but to use the same as a private dwelling-house only

2. Not to deposit rubbish except in the Lessee's dustbin and not to hang out washing

3. Not without the consent of the Landlord (which may be revoked at any time) to keep any live animal in the Flat

4. Not to obstruct the user by the Landlord or his tenants or other persons authorised by him of the forecourt entrance hall staircases lifts and passages

5. Not to place any notice or advertisement on the windows or outside of the walls of the Flat

6. To lay linovent or other substance to prevent noise under the carpets and linoleum in the Flat

7. Not to waste or permit to be wasted any water in the Flat

FORM 9

Drainage Agreement for the Installation of, and Grant of Rights Over, a New Drain with Covenants for Maintenance

(Drafted by Ernest H. Scamell of Lincoln's Inn)

THIS AGREEMENT under seal is made the —— day of —— 19— BETWEEN AB of *etc.* (hereinafter called "the Grantor") of the one part and CD of *etc.* (hereinafter called "the Grantee") of the other part

WHEREAS:—

(1) The Grantor is the registered proprietor with an absolute title of the freehold of the land and premises comprised in the Grantor's title referred to in the draft Deed of Grant contained in the Second Schedule hereto as the same is for the purposes of identification shown on the plan annexed hereto and thereon edged in red (hereinafter called "the red land")

(2) The Grantee is the registered proprietor with an absolute title of the freehold of the land and premises comprised in the Grantee's title referred to in the said draft Deed as the same is for the purposes of identification shown on the said plan and thereon edged in blue (hereinafter called "the blue land")

(3) The buildings situate on the blue land and shown hatched blue on the said plan are at present served as to soil drainage by a drain which passes through the red land and follows the red dotted lines marked A B and C on the said plan and thereafter connects with the main sewer in —— —— aforesaid

(4) Part of the said drain also serves the dwelling-house and premises situate on the red land

(5) The Grantee is desirous of erecting —— new houses on the blue land in the positions shown by the areas hatched yellow on the said plan and for the purpose of providing soil drainage for the same of laying a new drain to follow the course of the said existing drain and to be larger than and take the place of the said existing drain

NOW THIS DEED WITNESSETH AND IT IS HEREBY AGREED as follows:—

1. Immediately upon the execution of this Agreement the Grantee shall

(1) Pay to the Grantor the sum of £—— for his own absolute use and benefit credit being given for the sum of £—— already paid by the Grantee to the Grantor being as to the sum of £—— compensation to the Grantor for disturbance and loss of amenity during the execution of the works and things mentioned in this Agreement and as to the balance the estimated amount of the Grantor's legal and other professional costs in respect of the preparation and execution of this Agreement and the execution of the said works and things

(2) Open an account at —— Bank Limited at —— in the County of —— in the joint names of Messrs. —— and Company Solicitors of *etc.* [*Grantor's Solicitors*] and Messrs. —— and Company Solicitors of *etc.* [*Grantee's Solicitors*] and shall forthwith pay into the said account the sum of £—— and such sum or the balance thereof for the time being remaining in the said account shall be held upon the trusts and subject to the powers and provisions following that is to say:—

(a) Upon trust as to the amount of any such sum or sums as may for the time being and from time to time be due and owing by the Grantee to the Grantor under any of the provisions of this Agreement forthwith to pay the same to the Grantor for his own absolute use and benefit and subject thereto

(b) If and as soon as (but not before) the Grantor's surveyor shall certify in writing that the works and things hereinafter referred to have been duly completed in accordance with the provisions of this Agreement (hereinafter referred to as "completion of the works and things") Upon Trust for the Grantee for his own absolute use and benefit

2.—(1) Before the Agreed Date (as hereinafter defined) the Grantee shall submit plans to the Grantor or his surveyor showing the setting out of the proposed new drains and existing ground levels

(2) In this Agreement the expression "the Agreed Date" shall mean such a date not being more than —— years from the date hereof as may be agreed between the Grantor and the Grantee

3. On the Agreed Date the Grantee may subject to the provisions hereinafter contained enter into and upon so much of the red land with or without workmen as may be necessary for the purpose of laying such new drain in place of the before-mentioned existing drain and of doing all such other works and things as are mentioned in the First Schedule hereto or are incidental thereto (in this Agreement together called "the works and things") and shall thereupon diligently proceed with and complete the same in accordance in all respects with the provisions contained in the said Schedule and in the other parts of this Agreement

4. The works and things shall be completed in two stages and in the respective periods following that is to say:—

(1) As to all the works and things save for that part thereof referred to in paragraph 9 of the First Schedule hereto within 14 days from the Agreed Date

(2) As to the remainder of the works and things within 14 days from the end of the longer of the two periods mentioned in paragraph 9 of the said Schedule

Provided that if the whole or any part of the works and things shall not be completed in accordance with the time limit applicable thereto under the foregoing provisions of this clause there shall be and become due and owing from the Grantee to the Grantor the sum of £—— for each day or part of a day during which the works and things or any part thereof shall so remain uncompleted

5. The Grantee shall bear the total cost of carrying out the said works and things and all expenses incidental thereto including local authority charges and shall indemnify the Grantor and keep the Grantor indemnified against any liability whatsoever public or private in respect of the execution or purported execution of the works or things

6. During the course of the works and things the Grantee shall give the Grantor or his surveyor at least 24 hours notice

in writing of the fact of the works and things reaching each of the following stages respectively that is to say:—

(1) Excavations completed

(2) Pipes laid but uncovered

(3) Completion of the works and things

7. If before completion of the works and things the Grantee shall:

(a) become bankrupt or shall commit an act of bankruptcy or

(b) fail to commence the works and things within 7 days of the Agreed Date or

(c) fail to proceed with the works and things with reasonable diligence or

(d) fail to observe or comply with any of the provisions of this Agreement or

(e) abandon this Agreement

then and in any such event the Grantor may exercise either or both of the following rights that is to say:—

(1) forthwith by notice by registered post sent to the Grantee at the address hereinbefore set forth sent in that behalf determine this deed

(2) employ and pay any workmen or other persons to carry out and complete the said works and things and purchase all materials necessary for the purpose and the cost of so completing the said works and things shall be a sum due and owing by the Grantee to the Grantor and (without prejudice to any other provisions of this deed) recoverable by action accordingly

8. Upon completion of the said works and things and subject otherwise to the due performance and observance by the Grantee of the provisions of this deed the Grantor and the Grantee shall execute a Deed of Grant in the form of the draft Deed of Grant contained in the Second Schedule hereto

10. In case any dispute difference or question shall arise between the Grantor and the Grantee either during the progress or after the completion of the works and things as to the construction of this Agreement or as to any matter or thing of whatsoever nature arising thereunder or in connection therewith then either party may forthwith give to the other notice in

writing of such dispute difference or question and such dispute difference or question shall be and is hereby referred to the arbitration and final decision of a person to be appointed on the request of either party by the President of the Law Society for the time being and the award of such arbitrator shall be final and binding on the parties

IN WITNESS, *etc.*

THE FIRST SCHEDULE before referred to

[*Terms to be settled by Grantor's Surveyor*]

1. The run or drain shall be from the rear of the red land and shall pass between the garage situate upon the red land and the boundary fence thereon and thence out into ——

2. The three existing manholes are to be reconstructed in approximately their present positions and one additional manhole is to be provided at the change of direction of the drain approximately in line with the front of the said garage

3. The new drain shall be six inches in diameter or such other larger size as may be requisite to take in addition to the drainage at present discharged into the existing four inch drain the soil drainage from —— new houses which are about to be erected on the blue land or some part thereof

4. Some corbelling over may be necessary to avoid disturbance of the cultivated garden and the existing branches feeding into the drain as hereinbefore recited are to be repositioned and redirected to discharge into the new six inch drain with proper bends etc.

5. The materials to be used and the method of executing the said works and things shall be carried out in accordance with the British Standard Code of Practice relating to building drainage dated in 1950 and to the satisfaction of the Grantor's surveyor

6. The excavations shall be in the positions and to the depths shown on the plans referred to in clause 2 of this Agreement

7. The new drain shall be entirely surrounded with concrete and the depths shall be agreed and approved with the Local Authority and the Grantor's surveyor

8. All excavations are to be filled in well rammed down and where the excavations have been made in parts of the red land which are surfaced with hard material a temporary surface of shingle shall be applied on top of the drain trench and allowed to thoroughly settle for a period of not less than 70 days nor more than 90 days

9. After the expiration of such period as is specified in the last foregoing paragraph hereof the whole of the surface of any such parts of the red land as aforesaid (being parts which are contiguous with as well as the parts actually excavated) shall be made up as necessary and resurfaced with tarmacadam and finished to a similar finish as that at present existing

10. The said works and things are to be carried out so as to do as little damage and cause as little disturbance as possible and if necessary for complying with this requirement excavated material shall be carted off the site No part of the red land which is set out in lawn or grass shall be interfered with used for storage or entered upon for any purpose whatsoever

11. All damage done to the red land or any part thereof including any trees shrubs flowers fixtures fences edging to garden paths or to any adjoining land or to any goods shall be made good

THE SECOND SCHEDULE before referred to

H.M. LAND REGISTRY

LAND REGISTRATION ACTS 1925 and 1936

COUNTY:
GRANTOR'S TITLE NO.:
GRANTOR'S PROPERTY:
GRANTEE'S TITLE NO.:
GRANTEE'S PROPERTY:

THIS DEED OF GRANT is made the —— day of —— 19— BETWEEN AB of *etc.* (herein called "the Grantor") of the one part and CD of *etc.* (herein called "the Grantee") of the other part

WHEREAS:—

(1) The Grantor is the registered proprietor with an absolute

title of the freehold of the land and premises comprised in the Grantor's title above referred to as the same is for the purposes of identification shown on the plan annexed hereto and thereon edged in red (hereinafter called "the red land")

(2) The Grantee is the registered proprietor with an absolute title of the freehold of the land and premises comprised in the Grantee's title above referred to as the same is for the purposes of identification shown on the said plan and thereon edged in blue (hereinafter called "the blue land")

(3) Under the terms of an agreement entered into by and between the Grantor and the Grantee the Grantee has recently removed the soil drain which formerly served the buildings situate on the blue land as the same are shown hatched blue on the said plan and also (as to part of its length) the dwelling-house and premises (hereinafter called "Bleak House") situate on the red land and has replaced the same with a larger drain with necessary manholes (hereinafter called "the said drain") with a view to discharging into the same the soil from —— new houses which the Grantee is proposing to erect in the positions shown by the areas hatched yellow on the said plan

(4) So much of the said drain as passes through the red land is shown by the red dotted lines marked A B and C on the said plan

(5) It was a term of the said agreement that after the installation of the said drain the Grantor would grant to the Grantee such easements rights and privileges in respect thereof upon such terms and subject to such provisions as are hereinafter contained

Now in pursuance of the said term of the said agreement and in consideration of the covenants on the part of the Grantee hereinafter contained

THIS DEED WITNESSETH as follows:—

1. The Grantor hereby grants unto the Grantee the Grantee performing and observing the covenants on his part hereinafter contained the following easements rights and privileges that is to say:—

(1) Full and free right of running and passage of soil through and along so much of the said drain as passes through the red land for the benefit of the said buildings now situate

on the blue land and also for the benefit of all or such one or more of the said new houses as the Grantee may within 21 years from the date hereof erect on the blue land Except and Reserved unto the Grantor for the benefit of Bleak House full and free running passage of soil through and along so much of the said drain as serves Bleak House

(2) Full right and liberty at all reasonable times on notice (except in the case of an emergency) with or without workmen and others to enter into and upon so much of the red land as shall be necessary for the purpose of maintaining cleansing repairing and renewing the said drain or any part thereof causing as little disturbance as possible and making good all damage of whatsoever kind caused

2. The Grantee with the intent to bind so far as possible the blue land and each and every part thereof hereby covenants with the Grantor for the benefit of Bleak House and each and every part thereof that the Grantee will at all times hereafter:—

(1) Keep and maintain the said drain and any renewal thereof or substitution therefor in a good and sufficient state of cleanliness repair and condition and for the purpose aforesaid will from time to time as and when necessary renew the same or any part thereof

(2) Not discharge or cause or suffer to be discharged into the said drain any soil or other waste whatsoever other than soil from the buildings now situate or proposed to be erected on the blue land as hereinbefore mentioned nor to cause or suffer any surface water to be discharged into the said drain

3. The Grantee hereby further covenants with the Grantor that if and when the Grantee shall effect a registered disposition of the blue land or any part thereof in favour of another person or other persons the Grantee shall in that disposition procure such other person or persons to enter into the following covenants which shall be expressed to be for the benefit of and enforceable by the Grantor or other the registered proprietor or registered proprietors for the time being of an estate in the red land or any part thereof to the intent that such covenants may be enforced directly against such other person or persons aforesaid by the Grantor or other the registered proprietor or

registered proprietors aforesaid that is to say (a) covenants in terms similar to the covenants contained in clause 2 hereof or as near thereto as the circumstances will permit or require and (b) a covenant in terms similar to the present covenant or as near thereof as the circumstances will permit or require Provided that in case and as often as any such disposition shall relate to part only of the blue land the said covenants may be limited to an obligation to perform the same jointly with the Grantee or other the registered proprietor or proprietors of an estate in any other part or parts of the blue land And it is hereby declared that if and to the extent that (but no further) the Grantee or other the covenantor or covenantors from time to time shall comply with the terms of this further covenant his or their personal liability for the performance and observance of the covenants mentioned in clause 2 hereof shall be diminished or extinguished accordingly

4. The Grantor and the Grantee hereby apply to the Chief Land Registrar to enter on the Register:—

(1) Such notes on the Registers of the Grantor's title and the Grantee's title respectively of such of the easements rights privileges reservations and covenants hereby granted reserved or imposed as are capable of being recorded

(2) A restriction on the Register of the Grantee's title in the following terms:

"Except under an Order of the Registrar or the Court no disposition is to be registered unless it contains a certificate in the following form: 'It is hereby certified that this disposition contains the covenants required to be contained herein under the provisions of a Deed of Grant dated the —— day of —— 19— and made between AB of the one part and CD of the other part'"

5. Without prejudice to the operation of sections 78 and 79 of the Law of Property Act 1925 references herein to "the Grantor" and "the Grantee" shall where the context so admits or requires be deemed to include references to their respective successors in title and the persons claiming through or under them respectively.

IN WITNESS, *etc.*

FORM 10

Variable Rent Clause for Periodic Variations

(Drafted by Ernest H. Scamell of Lincoln's Inn)

(1) The yearly rent payable hereunder shall be as follows:—

(a) In respect of the period of the term hereby created ending on the —— day of —— 19— the sum of £—— (hereinafter called "the basic rent")

(b) In respect of each of the following periods respectively of the said term (hereinafter individually called "a rental period") that is to say (i) the period commencing on the —— day of —— 19— and ending on the —— day of —— 19— (ii) the period commencing on the —— day of —— 19— and ending on the —— day of —— 19— and (iii) the period commencing on the —— day of —— 19— and ending on the —— day of —— 19— such a sum as shall be equal to the basic rent multiplied by the variable factor applicable to the rental period in relation to which the calculation is being made

(c) The variable factor in relation to a rental period shall be the numerical fraction which shall have as its denominator the figure of —— (*a*) and as its numerator the figure which shall have been officially published by the Ministry of Labour and National Service (or any other Ministry or Government Department upon whom the duties in connection with the Index of Retail Prices shall have devolved) as the figure representing the average monthly Index of Retail Prices for the year preceding the year of commencement of that rental period

(2) If at any time or from time to time during the said term the figure published as aforesaid as the figure representing the average monthly Index of Retail Prices for any particular year shall be related to some commencing date other than the 17th day of January 1956 (which is the date at which for the purposes of the present Index of Retail Prices the index figure

(*a*) Insert current index of retail prices figure.

was taken at 100) then any new index figure which shall be published as at that date for the purposes of the said Index shall for the purposes of the preceding sub-clause hereof be substituted for the figure of —— therein mentioned and the expression "basic rent" shall be construed as meaning the yearly rent payable hereunder immediately before that date

(3) If there shall be any bona fide dispute difference or question between the Landlord and the Tenant as to the amount of rent payable hereunder or if Her Majesty's Government shall cease to publish any such Index of Retail Prices as aforesaid or if any event shall happen whereby it becomes impossible to implement the provisions for calculating rent herein contained then and in any such case either the Landlord or the Tenant may by not less than three months notice in writing served on the other party in that behalf determine the term hereby granted and without prejudice to the accrued rights of the parties hereunder the term hereby granted shall thereupon determine or be deemed to have determined at the end of the rental period in relation to which rent was last paid (or was able to be calculated) in accordance with the provisions hereof

FORM 11

Conveyance of Freehold Garage (Lock-up)

(*Drafted by Ernest H. Scamell of Lincoln's Inn*)

THIS CONVEYANCE is made the —— day of —— 19— BETWEEN AB of *etc.* (hereinafter called "the Vendor") of the one part and CD of *etc.* (hereinafter called "the Purchaser") of the other part

WHEREAS:—

(1) The Vendor is the estate owner in fee simple in possession subject as hereinafter mentioned but otherwise free from incumbrances of the property hereby conveyed (hereinafter called "the said Property")

(2) The said Property forms part of the property situate at

—— and known as —— (hereinafter called "the Entire Property") the main part whereof the Vendor has recently caused to be converted into [four] flats

(3) The Vendor has disposed of all the said flats to separate purchasers in accordance with a general scheme applicable thereto to the intent that the owner or lessee for the time being of each and any of the said flats might be able to enforce the performance and observance by the owners lessees or occupiers for the time being of the other flats of the covenants stipulations and conditions respectively entered into by them in that behalf or by any person or persons through whom they or any of them might respectively claim

(4) It was originally intended by the Vendor to convey the said Property to a purchaser of one of the said flats to the intent that the said property should be treated so far as practicable as part of such flat for the purposes of the said general scheme but as appears from the first recital hereof the Vendor has not in fact carried such original intention into effect

(5) The Vendor has agreed with the Purchaser for the sale and transfer to the Purchaser of the said Property (being part of the Entire Property) for the consideration and on the terms hereinafter appearing to the intent that the said Property shall so far as practicable fall within the provisions of the said general scheme

Now in pursuance of the said Agreement and the said intent and in consideration of the sum of £—— paid by the Purchaser to the Vendor (the receipt whereof the Vendor hereby acknowledges) and of the covenants and provisions hereinafter contained THIS DEED WITNESSETH as follows:—

1. THE Vendor as Beneficial Owner hereby conveys unto the Purchaser ALL THAT the property and premises described in the First Schedule hereto (being part of the Entire Property) TOGETHER WITH the easements rights and privileges set forth in the Second Schedule hereto TO HOLD the same unto the Purchaser in fee simple SUBJECT TO [*insert any subsisting covenants binding upon the Property*] so far as the same respectively relate to the said Property and are still subsisting and capable of being enforced

2. THE Purchaser with the intent to bind so far as may be the said Property and all persons who shall for the time being be the owner of any estate or interest in or the occupier of the said Property (but save as hereinafter provided not so as to be personally liable under this Clause after the Purchaser shall have parted with all his estate and interest in the same) hereby covenants with the Vendor and also as a separate covenant but subject as aforesaid with each person who is now or shall hereafter become the owner or lessee of the whole or any part of the Entire Property other than the said Property (hereinafter collectively called "the Covenantees") for the benefit and protection of the Entire Property and every part thereof (other than the said Property) that the Purchaser will at all times hereafter:—

(1) Put keep and maintain the said Property in good tenantable repair order and condition as respects structure decoration and tidiness and without prejudice to the generality of the foregoing keep and maintain the exterior wood and ironwork properly painted in a paint or paints of such colour or colours as the Covenantees for the time being interested in any part of the Entire Property may jointly determine and failing such determination in the like colour or colours as those last before used or as near thereto as possible

(2) Insure and keep insured the said Property against loss or damage by fire storm flood and tempest and other risks normal in a comprehensive policy in the full value thereof with the —— Assurance Company Limited and whenever required produce to the Covenantees or any one or more of them so requiring the Policy or Policies of such Insurance and the receipt for the last premium for the same and in the event of any moneys being received under or in respect of such insurance such moneys shall as soon as reasonably practicable be laid out in the repair rebuilding or reinstatement of the said Property and in case such moneys shall be insufficient for such purpose the deficiency shall be made good by the Purchaser

(3) Permit the Covenantees and each of them and each of their respective surveyors or agents with or without workmen and others at all reasonable times on notice to enter into and

upon the said Property or any part thereof to view and examine the state and condition thereof for the purposes of the covenants and provisions herein contained

(4) Permit the Covenantees and each of them and their respective surveyors or agents with or without workmen and others at all reasonable times on notice to enter into and upon the said Property for the purpose of repairing inspecting cleansing renewing and testing all pipes drains wires and conduits serving the whole or any part of the Entire Property and for similar purposes so however that the works repairs inspections cleansings and alterations shall be carried out with all despatch causing as little disturbance as possible and that the person or persons exercising the rights hereby conferred shall make good all damage done to the said Property in carrying out the same and to all decorations fixtures and movable chattels therein

(5) Observe the restrictions set forth in the Third Schedule hereto

(6) Save for the immediate purposes of ingress and egress at all times keep the main entrance gates shown on the plan annexed hereto and all doors forming part of the said property closed and fastened

3. THE Purchaser hereby further covenants with the Covenantees and each of them that if and when the Purchaser shall transfer or create any estate or interest in or part with the possession of the said Property in favour of another person or other persons the Purchaser shall procure such other person or persons to enter into a covenant for himself or themselves and his or their successors in title in the terms of the covenant set forth in Clause 2 hereof or as near thereto as the circumstances will admit or require and also a covenant in the terms of this covenant or as near thereto as the circumstances will admit or require which covenants shall be expressed to be for the benefit of and enforceable by the Covenantees and each of them or other the owner or owners for the time being of a legal estate in the whole or any part of the Entire Property other than the said Property to the intent that such covenants may be enforced directly against such other person or persons aforesaid by the owner or owners for the time being of a legal estate in the whole

or any part of the Entire Property other than the said Property And it is hereby declared that unless and until the provisions of this Clause shall be complied with the Purchaser shall be and remain personally liable to perform and observe the covenants on his part hereinbefore contained

4. It is hereby agreed and declared as follows:—

(1) If at any time during the period (hereinafter called "the Perpetuity Period") comprising the lives of the issue now living of His Late Majesty King George the Fifth and the life of the survivor of them and the period of 21 years after the death of such survivor the Purchaser after the expiration of 21 days' notice in writing served on him in that behalf and signed by the owner or owners lessee or lessees for the time being of two or more of the flats forming part of the Entire Property shall fail or persist in failing to observe or perform the covenants on the part of the Purchaser to repair maintain and insure contained in paragraphs (1) and (2) of Clause 2 hereof or such one or more of such covenants as shall be specified in the said notice in any such case and as often as the same shall happen then whether or not such failure or failures aforesaid shall constitute an actionable breach of covenant (or any breach of covenant) it shall be lawful for the person or persons so signing the said notice or any of them at any time during the Perpetuity Period:

(i) in the case of failure to repair or maintain as aforesaid with or without workmen or others (but without prejudice to any other remedy right or power available to such person or persons in respect thereof) to enter upon the said Property and execute such works acts or things (if any) thereon as shall be necessary or proper for repairing or maintaining the same in accordance with the standard of repair or maintenance specified in the said covenant and

(ii) in the case of failure to insure as aforesaid to insure the said Property for its full value

And all costs and expenses incurred in the exercise of any of the foregoing powers together with interest thereon at the rate of £[6 0s. 0d.] per centum per annum from the date or respective dates on which such costs and expenses shall have

been incurred shall be a charge upon the said Property enforceable by the person or persons incurring the same and a debt owed by the person so failing as aforesaid and recoverable accordingly

(2) The expressions "the Vendor" and "the Purchaser" shall where the context so admits and without prejudice to the operation of sections 78 and 79 of the Law of Property Act 1925 include their respective successors in title and the persons claiming through or under them and where the Purchaser consists of two or more persons all the covenants by the Purchaser shall be deemed to be by such persons jointly and severally

5. IT is hereby certified that the transaction hereby effected does not form part of a larger transaction or of a series of transactions in respect of which the amount or value or the aggregate amount or value of the consideration exceeds £3,500

IN WITNESS, *etc.*

THE FIRST SCHEDULE above referred to
[*Parcels*]

THE SECOND SCHEDULE above referred to
Easements Rights and Privileges included in the Conveyance

1. The right at all times in common with all other persons entitled to the like right to pass and re-pass on foot or with a private motor-car over and along the driveway shown on the plan annexed hereto and thereon coloured green for the purpose of the use and enjoyment of the said Property as a domestic garage in accordance with the provisions hereof but for no other purpose whatsoever

2. The right at all times in common with all other persons entitled to the like right to pass on foot only over and along the pathway shown on the said plan and thereon coloured green and hatched black for the purposes of ingress and egress to and from the said Property in connection with the use and enjoyment thereof for the purpose aforesaid but not otherwise

3. The benefit of the respective covenants to observe and

perform the stipulations and conditions contained in the respective assurances by the Vendor of the said flats on the part of the purchasers thereof respectively

THE THIRD SCHEDULE above referred to

1. Not to use or occupy the said Property nor permit the same to be used or occupied for any purpose whatsoever other than as a domestic garage for accommodating one private motor-car only nor to use or occupy the same as aforesaid in such a way as to give rise to a nuisance annoyance or inconvenience to the owners lessees or occupiers of any of the said flats comprised in the Entire Property or to others in the neighbourhood nor for any illegal or immoral purpose.

2. Not to do or permit to be done anything which may be or become a nuisance damage or annoyance or inconvenience to the owner lessee or occupier of any of the said flats or to the persons living in the neighbourhood and in particular not to run the engine of any car any longer than is necessary for the immediate purpose of ingress or egress to or from the said Property or obstruct dirty or foul any part of the said driveway or pathway respectively coloured green and green hatched black on the said plan

3. Not to do or permit to be done any act or thing which may render void or voidable any policy of insurance on the said Property or on any flat comprised in the Entire Property or cause an increased premium to be payable in respect thereof

FORM 12

An Agreement to grant to a New Company an option to purchase the Vendor company's business of Builders' and Timber Merchants and to take a lease of the Vendor's business premises—The New Company to be formed and controlled by a third company which provides part of the purchase money and guarantees completion of the purchase—The New Company to take over the Vendor's pension scheme (*a*)

(*Drafted by Sir Lancelot Elphinstone of Lincoln's Inn*)

AN AGREEMENT made the —— day of —— 19— BETWEEN —— whose registered office is situated at —— (hereinafter called the vendor) of the first part —— whose registered office is situated at —— (hereinafter called the [B] Company) of the second part —— of —— (hereinafter called [C]) of the third part and —— of —— (hereinafter called [D]) of the fourth part

WHEREBY IT IS AGREED as follows:—

1. The [B] Company shall forthwith procure the formation and incorporation under the Companies Act 1948 of a company (hereinafter called "the new company") with the name of —— if available for registration or such other available name as shall be agreed by the vendor and the [B] Company and having the object (among others) of adopting and carrying into effect this Agreement with or without any modifications agreed by the vendor and the [B] Company

2. (1) The nominal capital of the new company shall be £—— divided into —— preference shares of £—— each and —— ordinary shares of £—— each

(2) The said preference shares shall have the right to a fixed

(*a*) It is supposed that the vendor company retains substantial assets and there will be no amalgamation. Relief from stamp duty under s. 55 of the Finance Act, 1927, will not be admissible. As the agreement might be held to be partly voluntary, it should be executed as a deed. The stamp (10s.) should be adjudicated; and see note (*b*). There being no contract for sale until exercise of the option, the *ad valorem* sale duty will be charged on the instrument exercising the option.

cumulative preferential dividend at the rate of £—— per cent. per annum on the capital for the time being paid up thereon and such rights on a winding-up as are hereinafter mentioned and the [B] Company hereby guarantees to the vendor that a dividend (duly earned during the year) of not less than £—— per cent. per annum shall be paid to the vendor or other the holders for the time being of the said preference shares in every year except in respect of any of the said shares redeemed under the provisions hereinafter contained (*b*)

3. (1) The vendor agrees that the new company shall have the option of purchasing the property hereinafter described and of being granted the lease hereinafter mentioned on the terms appearing from this Agreement

(2) The said option shall be exercisable by notice in writing to the vendor at any time within one month from the execution by the new company of a deed adopting this Agreement

4. Upon the exercise of the said option the vendor will sell and the new company will purchase the following property belonging to the vendor the sale to take effect as from the —— day of —— [*or* the day following the end of 28 days from the date on which the said option was exercised] (hereinafter called "the transfer date")

(a) Stocks of timber held by the vendor on the transfer date at the following prices *viz.*:—

Any timber (not of the nature specified above) [*Describe timber sufficiently for identification*] held by the vendor on the transfer date and any timber on order at the transfer date at cost price

Planed wood at £—— per standard above the cost of the sawn wood before planing

Building materials held by the vendor or on order at the transfer date at cost price

(b) All book debts owing to the vendor in respect of its business of builders' merchants and timber merchants on the transfer date a schedule of which shall be prepared and

(*b*) Stamp duty will be charged on the guarantee as a bond or covenant for the maximum annual amount of the dividend: *Underground Electric Ry.* v. *I. R. C.* [1916] 1 K.B. 306.

submitted to the new company for examination and after the allowance for bad and doubtful debts has been made and agreed by the vendor and the new company the said book debts shall be purchased by the new company at a price equal to the nominal amount thereof after deducting the said allowance

(c) Plant and machinery used by the vendor for the purposes of its said business (other than tools and loose plant) at the price of £——

(d) Lorries motor cars and all other vehicles used by the vendor for the purposes of its said business and tools and loose plant so used at a price to be agreed by the vendor and the new company

(e) The goodwill of the vendor's said business at the price of £—— [*or* the goodwill of the vendor's said business is not included in the sale (*c*)]

(f) The benefit of all subsisting contracts made with the vendor in connection with its said business subsisting on the transfer date at the price of £—— [*or* at a price to be agreed between the vendor and the new company] [*or* the benefit of subsisting contracts made with the vendor in connection with its said business is not included in the sale (*d*)]

5. (1) The purchase money for the said property shall be paid and satisfied in manner following—

(a) by the allotment to the vendor or its nominees of —— ordinary shares in the [B] Company each share being of the nominal value of —— and issued as fully paid up and ranking *pari passu* with all other ordinary shares in the [B] Company

(b) by the allotment to the vendor or its nominees of all the said preference shares in the new company each share being of the nominal value of —— and issued as fully paid up and being entitled to the benefit of the said guarantee for payment of the dividends thereon

(2) The allotment of the said shares shall be accepted by the vendor in satisfaction of such amount of the purchase money

(*c*) If the vendor may resume business after the end of the lease, the goodwill should be excluded from the sale and included in the lease. See clause 6.

(*d*) See clause 9.

as shall be equal to the nominal value of the said shares and the balance of the purchase money shall be paid by the new company to the vendor in cash

(3) In addition to the purchase money the new company shall repay to the vendor all money paid by the vendor before the transfer date on behalf or for the benefit of the new company the amount so to be repaid to be agreed by the vendor and the new company and to bear interest at the rate of £—— per cent. per annum from the day on which it was paid by the vendor until repaid by the new company

6. (1) If the said option is exercised as aforesaid the vendor shall grant to the new company and the new company shall accept from the vendor a lease of the property at —— of which short particulars are given in the schedule hereto [Together with the goodwill of the vendor's said business of builders' merchants and timber merchants (*e*)] for the period of —— years from the transfer date at the annual rent of £—— [of which £—— part thereof shall be rent for the said goodwill (*e*)] payable by equal quarterly instalments on the usual quarter days the new company paying all rates and outgoings (except Schedule "A" tax land tax and the tithe redemption annuity) and the cost of insurance and the new company shall accept the vendor's title to grant the said lease without investigation or inquiry (*f*)

(2) The lease shall be determinable by the new company (having paid all rent down to the date of determination and having performed and observed up to such date all the covenants and provisions therein) at the end of the —— year of the said term on giving to the vendor six calendar months previous notice in writing

(3) The lease shall contain covenants by the new company (a) to insure the demised property against fire and against such other risks and for such sums as may be agreed by the vendor and the new company and (b) to keep the demised property in

(*e*) The words in brackets are for use if the goodwill is not included in the sale.

(*f*) The option to take the lease should be registered against the vendor as an estate contract.

as good state of repair as it was on the transfer date and in such state of repair to deliver up the demised property to the vendor at the end or sooner determination of the said term

(4) The lease shall contain a covenant by the vendor when the lease shall have ended or been determined (otherwise than by re-entry of the vendor on account of non-payment of rent by the new company or on account of breach of covenant by the new company) not to let the demised property or any part thereof for use as premises by builders' merchants or timber merchants until the end of —— years from the transfer date

(5) The covenants hereinbefore mentioned shall be in such form and the lease shall contain such other covenants (whether by the new company or the vendor) and provisions (including a power for the vendor to re-enter an account of the matters aforesaid) as may be agreed by the vendor and the new company and such covenants and provisions shall be framed so as to bind and enure for the benefit of all persons deriving title under the vendor or the new company as the case may require

(6) At the end or sooner determination of the said lease the new company having paid all rent due from it and having duly performed and observed all the covenants and provisions contained in the said lease or having compensated the vendor for any breach thereof shall be at liberty to remove and retain all plant and machinery (whether fixed or moveable) included in the sale to the new company provided that the removal of the said plant and machinery shall be effected within such period as may be agreed between the vendor and the new company and the new company shall remedy any damage done by such removal to the demised premises or any part thereof

7. (1) The purchase shall be completed on the transfer date at the office of Messrs. —— at which time and place the [B] Company shall hand over to the vendor certificates for the said ordinary shares in the [B] Company and the new company shall hand over to the vendor certificates for the said preference shares in the new company and shall pay to the vendor the balance of the purchase money and also any other money payable by the new company to the vendor on the transfer date Whereupon the vendor shall deliver to the new company possession of all the

said property capable of passing by delivery and shall execute all necessary assurances for vesting in the new company any of the said property not passing by delivery and shall execute the said lease and on execution of the counterpart of the said lease the new company shall be put in possession of the property demised thereby

(2) As it may not be possible for the said ordinary shares in the [B] Company to be issued by the transfer date completion of the purchase shall not be delayed on that ground provided that the [B] Company shall on the transfer date give to the vendor security to the satisfaction of the vendor for the issue of the said shares and for payment of interest on the amount of the purchase money represented by the said shares at the rate of £—— per cent. per annum from the transfer date until delivery of the certificates of the said shares to the vendor

(3) Completion shall not be delayed on the ground that the purchase price of any of the said property or the amount of any other money due to be paid to the vendor has not been ascertained on the transfer date if the new company shall give to the vendor security to the satisfaction of the vendor for the payment thereof with interest thereon at the rate of £—— per cent. per annum from the transfer date or from any earlier date from which interest is to run (*g*)

(4) If from any cause whatever other than the wilful default of the vendor any part of the purchase money or other money due to be paid to the vendor on the transfer date shall not be paid or satisfied on that date then (without prejudice to any security given under the foregoing provisions) the new company or the [B] Company in the case of the part of the purchase money to be satisfied by the transfer of the shares herein shall pay interest thereon at the rate aforesaid until the same shall be fully paid or satisfied

8. Until the transfer date the vendor shall carry on the said business as a going concern for its own benefit and if for any reason the sale or the grant of the said lease is not completed

(*g*) See clause 5 (3).

on that date the vendor shall as from that date continue to carry on the said business on behalf of the new company and as from that date shall account to and be indemnified by the new company accordingly

9. As from the transfer date the new company shall indemnify the vendor against all liability under the contracts of which the benefit is included in the sale [*or* the new company shall if so requested by the vendor complete all work remaining to be done under contracts made with the vendor in connection with its said business and subsisting on the transfer date as sub-contractor at a price to be agreed by the vendor and the new company]

10. (1) At any time after the allotment of the said preference shares in the new company to the vendor or its nominees

(i) The new company may give notice to the registered holder of the said preference shares or any of them (including shares purchased by the [B] Company) of its intention to redeem the said shares or any of them at par and;

(ii) The [B] Company may give notice to the registered owner of the said preference shares or any of them of its intention to purchase the said shares or any of them at par

(2) Every such notice shall be in writing and shall fix the time (not being less than three months from the date of such notice) and place for such redemption or purchase and the redemption or purchase shall be completed accordingly

(3) In the year —— and in every subsequent year not less than one thousand of the said preference shares shall be redeemed by the new company or purchased by the [B] Company under the foregoing provisions until all the said shares have been so redeemed or purchased In the absence of agreement between the new company and the [B] Company the number of shares to be redeemed by the new company in any year shall not be less than 500 and the number of shares to be purchased by the [B] Company in any year shall be not less than 500.

(4) Preference shares redeemed under the foregoing provisions shall rank for dividend down to the date when the redemption money in respect thereof shall be paid

(5) The guarantee by the [B] Company of the dividends on the said preference shares shall notwithstanding transfer thereof by the vendor or its nominees or the purchase thereof by the [B] Company continue to be operative in favour of the registered holder thereof from time to time

(6) On a winding-up the holder of the said preference shares (including shares purchased by the [B] Company whether standing in the name of the [B] Company or transferred to any other person) shall be paid all arrears of dividend not paid by the [B] Company up to the date of the commencement of the winding-up and shall be paid the capital paid up thereon And the [B] Company shall be repaid the amount of the dividends paid by it under its guarantee and all arrears of dividends which accrued due while the said shares were held by the B Company

(7) The rights on a winding-up of the holders of the said preference shares and of the [B] Company shall have priority to the rights of the holders of the ordinary shares in the new company and the rights of the holders of the preference shares not purchased by the [B] Company shall have priority to the rights of the holders of shares purchased by the [B] Company and to the rights of the [B] Company and the rights of the holders of shares purchased by the [B] Company shall have priority to the rights of the [B] Company

11. (1) The new company shall allot to the [B] Company such number of shares in the new company fully paid up [*or* to be fully paid up by the [B] Company] as will enable the [B] Company to cast a majority of votes at all meetings of the new company and the [B] Company shall not except with the consent of the vendor part with any of the shares so allotted or the rights attached thereto if the [B] Company would thereby cease to be able to cast a majority of votes at any such meeting as aforesaid

12. (1) The new company shall undertake and perform as from the transfer date all the obligations of the vendor under

any pension scheme operated by the vendor on that date (hereinafter called "the vendor's pension scheme" (*h*)) for the grant of benefits to its employees or their dependants and the new company shall as from the transfer date indemnify the vendor against all such obligations

(2) The foregoing sub-clause shall extend to all obligations of the vendor under the vendor's pension scheme in respect of employees of the vendor who remain in the vendor's employment after the transfer date or become employees of the vendor after the transfer date Provided that the vendor shall be responsible for the payment of all contributions payable under the vendor's pension scheme by or in respect of any such employee [*or* but this provision shall not apply to employees of the vendor who remain in the vendor's employment after the transfer date and do not become employees of the new company under the next following sub-clause]

(3) Any employee of the vendor who immediately before the transfer date was in the employment of the vendor and on the transfer date or within such time as the new company may consider reasonable becomes an employee of the new company shall be entitled to the same benefits under the vendor's pension scheme as operated by the new company as if he had remained in the employment of the vendor Provided that the employee shall be liable to pay the contributions (or such part thereof as the new company shall consider just) which would have been payable by him if he had remained in the employment of the vendor until he became an employee of the new company

(4) The new company may admit any of its employees (in addition to former employees of the vendor) to the benefits of the vendor's pension scheme on such terms as the new company may consider just but not as to affect or reduce the benefits of any former employee of the vendor under the vendor's pension scheme

(5) (i) If any employee or former employee of the vendor shall become an employee of the [B] Company then sub-clause (1) of this clause shall in relation to that employee be

(*h*) It is assumed that the vendor and the B Company have subsisting pension schemes, but that the new company will not have a pension scheme. Clause 12 must be adapted to suit the facts.

construed and have effect from the date on which the said employee became an employee of the [B] Company as if the words "the [B] Company" were substituted throughout for the words "the new company" and accordingly in relation to that employee the obligations and liabilities imposed by sub-clause (1) of this clause on the new company shall become the obligations of the [B] Company and not of the new company

(ii) If any employee of the new company who has become entitled to benefits under the vendor's pension scheme by reason of the provisions of sub-clause (2) or sub-clause (3) of this clause shall with the concurrence of the new company and of the [B] Company agree to accept benefits under any pension scheme operated by the [B] Company (hereinafter called "the [B] Company's pension scheme") both the new company and the [B] Company shall in relation to that employee be relieved of all obligations and liability under the vendor's pension scheme

(6) All property (including the benefit of any contracts with the vendor and of any guarantees and insurance policies) held by or on behalf of the vendor for the purposes of paying or securing the benefits payable or to become payable under the vendor's pension scheme shall as from the transfer date be held for the purposes of paying or securing the benefits payable or to become payable under the vendor's pension scheme by the new company or the [B] Company under the provisions of this clause and all or any part of the said property shall at the joint request of the new company and the [B] Company be transferred into the joint names of both companies or into the name of either company or of any trustees being at least two in number or to a trust corporation as may be agreed upon by both companies to be held and applied for the purposes aforesaid the cost of any such transfer being borne by the said companies as may be agreed by them

(7) In this clause the expression "The vendor's pension scheme" and "the [B] Company's pension scheme" shall include any arrangement made by the vendor or by the [B] Company (as the context may require) for the grant of any benefits to any employee or former employee or to the dependants of any such employee and "benefits" shall include any pension

allowance or gratuity whether present or future and whether vested or contingent

(8) Subject to the provisions hereinafter contained this clause shall apply to a director in like manner as it applies to an employee

(9) The contribution payable under the vendor's pension scheme in respect of the said [C] or [D] whether payable by the vendor as employer or by the said [C] or [D] as an employee shall as from the transfer date be paid by the new company until they shall respectively attain the age of 65 years and shall be so paid notwithstanding that they or either of them before attaining that age may have ceased to be employed by the new company and such contributions shall be paid in addition to any salary or other remuneration which they may respectively receive from the new company or from the [B] Company as director or under any agreement for service

13. Each of the said [C] and [D] parties hereto shall enter into an agreement with the new company to serve the new company for —— years from the transfer date at the yearly salary of £—— to be paid to them jointly by equal quarterly instalments on the usual quarter days and to be divided between themselves as they may agree or in default of agreement equally and in the event of either of them dying or ceasing to be employed by the new company the other of them shall receive the yearly salary of £—— Each of them shall give his whole time and attention to the business of the new company and shall be employed at —— but shall when reasonably required by the new company travel for the purposes of the business of the new company or of the [B] Company being paid his reasonable expenses in addition to his salary The agreement shall be in such form and shall contain such provisions as may be agreed between the parties to the said agreement

14. Each of them the said [C] and [D] shall provide and maintain his own motor-car for use in the performance of his duties under the said agreement or as a director for which he shall be paid by the new company the yearly sum of £—— and shall receive free petrol and oil or the cost thereof

15. As soon as may be after the completion of the sale of the said property to the new company the said [C] shall be appointed a director and chairman of the board of directors of the new company and a director of the [B] Company and the said [D] shall be appointed a director of the new company

16. The [B] Company hereby guarantees and warrants to the vendor that the new company shall be registered as a limited company within —— months from the date of this Agreement and that the new company will within —— months after registration of the new company execute a deed adopting this Agreement and that the new company will exercise the said option in due time and will perform this Agreement

17. The costs of all parties of and incidental to this Agreement and of carrying the same into effect and of the formation and registration of the new company and all stamp duties charged in respect of this Agreement or on any deed made by the new company after registration adopting this Agreement or on any instrument executed for carrying the same into effect shall be paid by the new company

18. If any question or difference shall arise between the parties hereto or any of them and the new company or any person claiming under this Agreement touching this Agreement or the validity construction or effect thereof or as to the rights duties or obligations of any persons hereunder or as to any other matter in any way arising out of or connected with the subject matter thereof or if there shall be failure to agree on any matter which is to be agreed by the parties hereto or any of them or by any of the said parties and the new company or any other person the same shall be referred to a single arbitrator Provided that such arbitrator if the matter in dispute or as to which there has been failure to agree is the price or value of any property shall be a chartered accountant who if the persons concerned are unable to agree shall be selected by the President for the time being of the Institute of Chartered Accountants for England and Wales or if the matter in dispute or as to which there has been failure to agree is any matter other than the price or value of any property shall be a barrister-at-law who

if the persons concerned are unable to agree shall be selected by the President for the time being of the Law Society

IN WITNESS, *etc.*

THE SCHEDULE ABOVE REFERRED TO

[Particulars of the property to be leased]

We [*the Directors of the Vendor*] being the directors and acting on behalf of the Vendor and we [*the Directors of the [B] Company*] being the directors and acting for and on behalf of the [B] Company hereby agree so far as we lawfully can that the said companies shall be bound by the above written Agreement as from this —— day of ——

Signatures over a 6d. stamp (*i*)

FORM 13

Co-operative Shareholding Agreement and Declaration of Trust

(*Supplied by Messrs. Sprake and Ranson, Solicitors*)

THIS AGREEMENT is made the —— day of —— BETWEEN THE SEVERAL PERSONS whose names addresses and descriptions are specified in the Schedule hereto (hereinafter called "the Beneficiaries") of the one part and [A.B. of etc.] Stock and Sharebroker (hereinafter called "the Nominee") of the other part

WHEREAS:—

1. THE Nominee is the registered holder of —— shares of —— each Numbered —— to —— both numbers inclusive in XYZ Limited.

(*i*) Unless executed under seal as suggested in footnote (*a*), above. If the execution of one or both of the companies cannot be immediately obtained the negotiating directors may desire to record their intention that the companies should be bound as from the named date.

2. THE consideration for the [purchase] [allotment] of the said shares was provided by the Beneficiaries in the amounts set opposite to the respective names of the Beneficiaries in the said Schedule.

NOW IT IS HEREBY AGREED between the parties hereto as follows:—

1. IN this Agreement the following expressions shall have the meanings respectively assigned to them, namely

"the Company" shall mean XYZ Limited.

"the said shares" shall mean the said —— shares registered in the name of the Nominee and shall include any shares in the Company which may be issued to the Nominee by reason of his holding the said shares.

"Beneficiary" shall include the personal representatives of a deceased beneficiary and any person to whom a transfer is made and notified in accordance with Clause 6 hereof.

"the appropriate proportion" shall mean such proportion as the number of shares set opposite to the name of a Beneficiary in the said Schedule shall bear to the total of the said shares.

2. THE Nominee shall hold the said shares as nominee and trustee for the Beneficiaries.

3. As between the Nominee and the Beneficiaries each of the Beneficiaries shall be entitled to all such rights (except the rights to vote at and attend meetings of the Company or to be a Director thereof) as if his or her name had been entered in the register of shareholders of the Company as the holder of the number of shares set opposite to his or her name in the said Schedule hereto.

4. THE Nominee shall on behalf of the Beneficiaries (unless prevented by illness or other reasonable cause) attend all meetings of the shareholders of the Company and vote thereat (either in person or by proxy) in such manner as he shall in his discretion think most beneficial in the interests of the Beneficiaries or the majority in value of them.

5. THE Nominee shall upon receipt by him of any dividend, bonus, repayment of capital or other moneys paid to him by the Company by reason of his being the registered holder of the said shares, forthwith pay the same to the Beneficiaries in the appropriate proportions after deducting therefrom a commission at a rate not exceeding £5 per cent. of the money so distributed. The Nominee shall be entitled to retain such commission for his own benefit.

6. ANY Beneficiary may transfer his rights under this Agreement to any other person. Upon any such transfer such Beneficiary shall give notice thereof to the Nominee and the transferee shall from the date when such notice shall be received by the Nominee stand in the same position in all respects as if from that date he had been a party to this Agreement instead of such Beneficiary.

7. THE Nominee shall keep a register of the Beneficiaries and shall record therein all transfers and devolutions of the interests of the Beneficiaries. The Nominee shall be entitled to a fee of [5s.] upon the registration of any notice of transfer or of any grant of representation to the estate of a deceased Beneficiary or any order or other document evidencing the devolution of a Beneficiary's interest.

8. THE Nominee shall not be required to recognise any Beneficiary as holding his interest under this Agreement upon any trust and shall not be bound by or compelled in any way to recognise (even when having notice thereof) any equitable, contingent, future or partial interest therein or any other rights in respect of a Beneficiary's interest except an absolute right to the entirety thereof in the Beneficiary whose name is entered on the said register.

9. ANY notice dividend or document may be sent to a Beneficiary by ordinary letter post at the address of the Beneficiary shown in the said register and if so sent shall be deemed to have been properly served or sent.

10. THE Nominee will at the request and cost of any Beneficiary and provided that the Company will agree to register the transfer to such Beneficiary transfer to him the appropriate proportion of the said shares and upon such transfer being

registered by the Company the rights and obligations of that Beneficiary and of the Nominee in relation to that Beneficiary shall forthwith cease but without prejudice to any such rights or obligations which may have accrued before the date of such transfer.

11. THE Nominee shall as between himself and the Beneficiaries be entitled to transfer the whole of the said shares and the rights and obligations of the Nominee under this agreement to any member of the [Provincial Brokers Stock Exchange] [who shall be approved by a majority in value of the Beneficiaries] or to a trust corporation and immediately after any such transfer will give notice thereof to each of the Beneficiaries.

IN WITNESS whereof the said parties to these presents have hereunto set their hands and seals the day and year first before written.

THE SCHEDULE hereinbefore referred to:—

Name Address and Description of Beneficiary	No. of shares	Consideration Money	Signature and seal of Beneficiary	Witness to signature sealing and delivery by Beneficiary

SIGNED SEALED AND DELIVERED by the said A.B. in the presence of } L.S.

FORM 14

Agreement for the Mutual Protection of Co-Directors of a Company One of whom is not Actively Engaged in the Business Activities of the Company (*a*)

THIS AGREEMENT under seal is made the —— day of —— 19—— BETWEEN —— of —— in the County of —— (hereinafter

(*a*) Professional or other considerations may make it necessary or desirable for a director not to engage in active business.

called "Mr. A.") of the first part —— of —— in the County of —— (hereinafter called "Mr. B.") of the second part and —— of —— in the County of —— (hereinafter called "Mr. C.") of the third part.

WHEREAS:—

(1) The parties hereto are co-directors [and shareholders] of the limited company registered under the name of —— Limited whose registered office is situate at —— (hereinafter called "the Company") but it is intended that only Mr. B. and Mr. C. shall be actively engaged in the trading activities of the Company.

(2) The parties hereto are desirous for their mutual benefit and protection of entering into the covenants and undertaking the obligations hereinafter contained.

NOW THIS DEED WITNESSETH as follows:—

1. Mr. A. Mr. B. and Mr. C. hereby respectively covenant with each of the others of them that each of them respectively shall not either individually or in combination (other than a combination consisting of or including all of them the said parties hereto) either during the tenure of his office as a director of the Company or during the period ending at the expiration of five years from the date when he shall cease to be such director:—

(1) in any manner make known divulge or communicate or permit or suffer to be made known divulged or communicated to any person firm or corporation (other than a party hereto or the Company) any information or knowledge relating to the technical processes or methods of manufacture of the Company's products or to the identity of any person firm or corporation who shall have been a customer or client of or a person otherwise dealing with the Company at any time when he shall have been a director of the Company

(2) directly or indirectly in any manner be or become interested as an individual partner principal agent clerk employee stockholder officer director trustee or in any other capacity whatsoever in the business (other than that of the Company) of the manufacture and distribution of —— and similar or allied

goods within a radius of [ten] miles of the Company's said registered office

2. Mr. A. Mr. B. and Mr. C. hereby respectively further covenant with each of the others of them as follows:—

(1) That none of them respectively shall (without the consent in writing of the person or persons affected) do or omit to do any act or thing which would prevent any other or others of them from retaining his office or their offices as a director or directors of the Company and without prejudice to the generality of the foregoing that each of them respectively shall oppose any proposal or draft resolution having as its object the removal from such office of any other or others of them

(2) Notwithstanding anything from time to time otherwise contained or incorporated in the Articles or Memorandum of Association of the Company or implied under the general law and subject as hereinafter provided none of them the said parties hereto shall receive or be entitled to or shall in fact receive any sum of money or other consideration of any kind from the Company in respect of his services as a director of the Company or otherwise other than the salaries and other remuneration (if any) to which each of them shall be entitled under their respective Service Agreements in force at the date hereof Provided always that the terms of this sub-clause shall not have effect in relation to any such sum of money or other consideration as the Company may with the unanimous approval (signified in writing or by resolution) of all the parties hereto or the survivors of them for the time being agree to pay or provide to or for any one or more of the said parties hereto.

IN WITNESS, etc.

FORM 15

Agreement between an Owner of Land and a Developer for the Development and Realisation of the Land to their Mutual Advantage

(*Drafted by Ernest H. Scamell of Lincoln's Inn*)

THIS AGREEMENT under seal is made the —— day of —— 19— BETWEEN AB LIMITED whose registered office is situate at —— in the County of —— (hereinafter called "the Owner") of the one part and CD of —— in the County of —— (hereinafter called "the Developer") of the other part

WHEREAS:—

(1) The Owner is the registered proprietor with an absolute title of the freehold land known as —— in the County of —— and registered under Title Number —— (hereinafter called "the Site")

(2) The Developer is desirous of developing and the Owner is desirous of realising the Site to the best advantage of each of them respectively and the Owner and the Developer are desirous that the Site shall be developed and realised on the terms and subject to powers and provisions hereinafter contained

NOW THIS DEED WITNESSETH and it is HEREBY AGREED as follows:—

1. The Owner hereby represents and warrants that the Owner is the registered proprietor with an absolute title of the freehold of the Site free from incumbrances and has a good right to transfer the same

2. Without prejudice to the operation and generality of the preceding clause hereof it shall be a condition precedent to any liability on the part of the Developer hereunder that he or his Solicitor shall be satisfied as to the Owner's title to the Site and the Owner shall furnish to the Developer or his Solicitors such evidence thereof as the Developer or his Solicitors may reasonably require

3. Within two weeks from the date when the Owner shall have furnished to the Developer or his Solicitors all such evidence as is required by clause 2 hereof the Developer or his Solicitors shall notify the Owner in writing that he or they are satisfied or (as the case may be) dissatisfied as to the Owner's title to the Site and in default of any such notification the Developer or his Solicitors shall on the expiration of the said period be conclusively deemed to be satisfied in regard thereto

4. As from the date of receipt by the Owner of the notice in writing referred to in clause 3 hereof or from the expiration of the said period of two weeks whichever shall be the earlier (hereinafter called "the possession date") the Owner shall permit the Developer to enter into possession of the Site for the purpose of executing the works and things hereinafter referred to and the following provisions shall have effect in regard to such possession:—

(1) the Developer shall be deemed to enter into possession as a licensee of the Owner

(2) the Developer shall be entitled to remain in possession as aforesaid so long only as he shall diligently execute or shall cause to be diligently executed the works and things hereinafter referred to

(3) for the purposes of or incidental to the execution of the said works and things the Developer may permit any other person or persons to enter upon the Site and may bring or permit to be brought onto the Site all such materials equipment and things as may be requisite

5. As soon as reasonably practicable after the possession date the Developer shall commence or cause to be commenced on the Site the execution of such works and things (hereinafter called "the said works") as he in the exercise of his free discretion shall consider likely in conjunction with the Site to realise the greatest capital value regard being had (*inter alia*) to the cost of the said works and the following provisions shall have effect in regard to the said works that is to say the Developer shall

(1) Obtain all licences permissions and consents and execute and do all works and things and bear and pay all expenses

required or imposed by any national or local or other public authority or by any existing or future legislation in respect of the said works or any part thereof or of any user thereof

(2) On request supply to the Owner all such information concerning the said works as the Owner may reasonably require and produce to the Owner such plans drawings specifications tenders estimates books accounts and other documents relating to the said works and the costs thereof as may from time to time be in the possession or control of the Developer and copies of all or any such documents as may at any time have been in the Developer's possession or control

(3) Disclose to the Owner the existence and nature of any and every financial interest which the Developer may have in any company or firm which shall be employed by the Developer or by any other person company or firm to execute any of the said works

(4) Insure in the joint names of the Developer and the Owner and keep so insured in an office of repute or under a policy issued by underwriters of Lloyd's against the following risks and liabilities that is to say:—

(a) damage or destruction of the said works or any part thereof by fire (to the full value for the time being of the said works)

(b) personal injury to or the death of any person whomsoever arising out of or in the course of or caused directly or indirectly by the execution of the said works or any part thereof

(c) injury or damage of whatsoever kind to any property real or personal arising out of or in the course of or caused directly or indirectly by the execution of the said works or any part thereof

(5) If and as often as requested so to do by the Owner produce all or any such policies of insurance relating to the risks and liabilities aforesaid or any of them and all or any premium receipts in respect of such policies Provided that if the Developer shall make default in producing any such policies or receipts the Owner may insure against any risk or liability with respect to which such default shall have been made and all sums paid by the Owner in premiums shall be deemed to

have been paid on behalf of the Developer in performance of his obligations under this Agreement and recoverable from the Developer accordingly

(6) Diligently proceed with and complete the said works or cause the same to be diligently proceeded with and completed so that the same shall be completed within a period of —— from the date hereof Provided that if the said works or any part thereof shall be delayed by *force majeure* or by reason of exceptionally inclement weather or by reason of any loss or damage by fire thereto then in any such case there shall be added to the said period such further fair and reasonable period as the Developer and the Owner may agree or in default of agreement as may be determined by arbitration hereunder

(7) Indemnify the owner in respect of all losses claims demands actions or proceedings whatsoever arising out of or by reason of the execution of the said works or in respect of any non-performance or non-observance of any of the provisions of this clause

(8) Permit the Owner and his agents or servants at all reasonable times to enter upon the Site for the purposes of inspecting the said works or any part thereof

(9) Pay and discharge all the costs and expenses of and incidental to the execution of the said works and to the performance and observance of all the provisions of this clause

6. On and from the possession date and until the expiration of —— from the possession date or such longer period as may from time to time be agreed between the Developer and the Owner the Developer shall have full and exclusive power and authority to find a prospective purchaser or purchasers (hereinafter called a "purchaser") for the Site together with the said works for all the registered estate and interest therein of the Owner and subject to the provisions hereinafter contained concerning the said power the Owner shall upon the written requisition of the Developer enter into a binding contract in writing for the sale of the Site together with the said works to such purchaser and such contract shall provide for or include the following terms:—

(1) That the purchase price shall be such a sum as may have been agreed between the Developer and the purchaser

(2) That completion shall take place at the offices of Messrs. —— of —— in the County of —— the Owner's Solicitors

(3) That the purchase price shall on or before completion be paid by the purchaser into a deposit account to be opened in the joint names of the Owner and the Developer at the —— branch of the —— Bank

(4) That the Conditions of Sale known as the National Conditions of Sale Seventeenth Edition shall apply so far as the same shall be applicable or appropriate save in so far as the same may be expressly or impliedly varied by the contract

7. The power conferred on the Developer by the preceding clause hereof shall be exercisable subject to the following conditions:—

(1) that the price to be paid by the purchaser shall be the best price in money that can reasonably be obtained

(2) that unless otherwise agreed between the Developer and the Owner the purchaser shall not be or include any company or firm in which the Developer is or is proposing to become financially interested nor a nominee for the Developer or for any such company or firm aforesaid

(3) that the Developer shall have complied with all the other obligations on his part herein contained

8. The Developer shall during the period of —— or any such longer period as aforesaid use his best endeavours to find a purchaser for the Site together with the said works in accordance with the provisions hereinbefore contained

9. On completion of a sale of the Site together with the said works to a purchaser found by the Developer as aforesaid the purchase money having been paid and received as aforesaid shall be held by the Owner and the Developer upon the following trusts that is to say:—

(1) Upon trust to pay to the Owner absolutely

(a) the amount of all costs charges and expenses properly incurred by him as incident to the sale and any other attempted sale and

(b) the sum of £—— and subject thereto

(2) Upon trust to pay to the Developer or according to his order such a sum as shall be equal to the amount of all the costs and expenses properly incurred or charged by the Developer of and incidental to the execution of the said works and to the performance and observance by the Developer of the obligations on his part contained in this Agreement as the same shall be certified in accordance with the provisions hereinafter contained and subject thereto

(3) Upon trust to pay the balance thereof as to one equal half part thereof to the Owner and as to the other equal half part thereof to the Developer

10.—(1) As soon as conveniently may be after the completion of the said works the Developer shall cause an auditor or accountant to be appointed as is hereinafter provided to prepare accounts showing therein the costs and expenses properly incurred or charged by the Developer of and incidental to the execution of the said works and the performance and observance by the Developer of the obligations on his part contained in this Agreement and to certify in writing the total amount of such costs and expenses for the purposes of the provisions of sub-clause (2) of the preceding clause hereof and unless some error shall be discovered within one month after the issue of the aforesaid certificate of the said auditor or accountant such certificate shall (in the absence of fraud) be conclusive evidence as to the amount of the said costs and expenses for the purposes of the said sub-clause (2) of the preceding clause hereof and for such purposes shall be final and binding upon the Owner and the Developer

(2) The auditor or accountant referred to in the preceding sub-clause of this clause shall be such person or persons as shall be appointed in that behalf by the Developer and the Owner jointly Provided that in default of agreement between the Developer and the Owner in regard to the person or persons to be so appointed the Developer and the Owner shall each appoint one person and the persons so appointed shall together constitute the said auditor or accountant Provided further that in the event of any difference or failure to agree arising between any such persons aforesaid the same shall be resolved by an umpire to be

appointed by such persons whose decision shall be conclusive and binding upon the said persons for the purposes of discharging their duties hereunder

(3) The Developer shall produce or cause to be produced to the said auditor or accountant all such books accounts and other documents as may be requisite to enable the said auditor or accountant to prepare the said account and issue the said certificate.

11. The Developer shall keep or cause to be kept proper books of account with respect to:—

(a) all sums of money expended and all costs charged by the Developer of and incidental to the execution of the said works and to the performance and observance by the Developer of the obligations on his part contained in this Agreement and the matters in respect of which the same shall be so expended and charged

(b) All sums of money credit or other consideration (if any) received or to be received by the Developer or any nominee of the Developer and arising either directly or indirectly out of or in respect of the execution of the said works

(c) All such other expenditure and receipts (if any) as may be necessary for the purposes of this Agreement

12.—(1) In the event of the Developer having used his best endeavours in that regard being unable to find a purchaser within the period prescribed by clause 6 hereof who in fact completes the purchase the Developer shall have and become entitled to and the Owner hereby grants to the Developer the exclusive option or right at any time but subject as hereinafter provided to purchase the Owner's registered estate and interest in the Site (together with the said works) on and subject to the following terms and conditions:—

(a) The purchase price shall be the sum of £——

(b) The Owner will sell as beneficial owner

(c) Completion of the purchase shall take place on or before the expiration of [two] months from the date of exercise of the said option at the offices of the said Messrs. —— the Owner's Solicitors

(d) Save in so far as otherwise expressly or impliedly varied by the provisions of clauses 2, 3, 4 and 15 hereof or of this clause the Conditions of Sale known as the National Conditions of Sale Seventeenth Edition shall apply so far as the same shall be applicable or appropriate

(2) The said option shall be exercisable by the Developer serving a notice in writing in that behalf on the Owner (or his personal representatives) or by sending the same by registered post to the Owner (or his personal representatives) at the address hereinbefore set forth or such other address as may hereafter be notified to the Developer for the purpose

(3) After the said option shall have become exercisable the Developer if required so to do by notice in writing served in that behalf on the Developer (or his personal representatives) or sent by registered post to the Developer (or his personal representatives) at the address hereinbefore set forth or such other address as may hereafter be notified to the Owner for the purpose shall forthwith duly exercise the said option

13. In either of the following events that is to say:—

(1) If the Developer (or his personal representatives) having exercised the option granted by the preceding clause hereof shall fail neglect or omit to complete the purchase in accordance with the provisions of sub-clause (1) of the said clause or

(2) If the Developer (or his personal representatives) shall fail neglect or omit to exercise the said option within fourteen days of being required so to do by notice in writing served in accordance with the provisions of sub-clause (3) of the preceding clause hereof the Owner shall forthwith be and become entitled to sell the Site together with the said works for all his said registered estate and interest therein free from all rights and interests created by this Agreement

14. The power of sale conferred upon the Owner by the preceding clause hereof shall be exercisable subject to the following conditions:—

(1) That the conditions specified in sub-paragraphs (1) (2) and (3) of clause 7 hereof shall apply but with the substitution of

the word "Owner" for the word "Developer" wherever the latter word appears

(2) That the contract for sale shall provide for or include the provisions specified in sub-paragraphs (2) (3) and (4) of clause 6 hereof

15. On or before completion of any sale by the Owner under any of the provisions of this Agreement the Developer shall at his own cost and expense execute such instrument or instruments and do such acts and things as may be requisite to enable the Owner to transfer the Site (together with the said works) free from all rights and interests vested or to be vested in the Developer under or by virtue of this Agreement and the Developer hereby appoints the Owner to be the Developer's attorney to execute all such instruments and do all such acts and things as aforesaid

16. The purchase money derived from a sale by the Owner under the powers conferred by clauses 13 and 14 hereof shall be held by the Owner and the Developer upon the following trusts that is to say:—

(1) Upon trust to pay to the Owner absolutely (a) the amount of all costs charges and expenses properly incurred by him as incident to the sale and any attempted sale and (b) the sum of £—— and subject thereto

(2) Upon trust to pay the balance thereof to the Developer absolutely

17. It is hereby declared as follows:—

(1) that this Agreement is not intended to create any partnership between the Owner and the Developer

(2) that this Agreement shall continue in force until completion of a sale hereunder of the Site (together with the said works) and execution of the trusts herein contained of and affecting the proceeds of sale thereof but (without prejudice to any accrued rights) shall thereafter cease and determine

18. In case any dispute difference or question shall arise between the Owner and the Developer during the subsistence of this Agreement as to the construction thereof or as to any matter

or thing of whatsoever nature arising thereunder or in connection therewith (including any matter or thing which is left by this Agreement to be ascertained by reference to the standards of reasonableness) then either party shall forthwith give to the other notice in writing of such dispute difference or question and such dispute difference or question shall be and is hereby referred to the arbitration and final decision of a person to be appointed on the request of either party by —— and the award of such Arbitrator shall be final and binding on the parties hereto.

IN WITNESS, etc.

FORM 16

Trust Deed for giving effect to Directions for setting up a Charity contained in a Will

Drafted by Peter Elman of the Middle Temple

THIS TRUST DEED is made the —— day of —— 19— BETWEEN AB of *etc.* and CD [a Bank] of *etc.* (hereinafter called "the Will Trustees") of the first part the said CD (hereinafter called "the Custodian Trustee") of the second part and the said AB and EF of *etc.* GH of *etc.* and IJ of *etc.* (hereinafter called "the Managing Trustees") of the third part

WHEREAS:—

(1) XY deceased late of *etc.* who died on the —— day of —— 19— by her Will dated —— 19— gave devised and bequeathed all her residuary estate to the Will Trustees upon the trusts for Charity therein set out and hereinafter contained

(2) The said residuary estate now consists of the investments particulars of which are set out in the Schedule hereto and the same are vested in the name of the Custodian Trustee

(3) In accordance with and for the purpose of giving full effect to the directions of the said XY deceased in her said Will contained and otherwise of regulating the management and administration of the said trusts for Charity the parties hereto have agreed to execute this Trust Deed

NOW THIS TRUST DEED made in consideration of the premises WITNESSETH as follows:—

1. The name of the Charity by the said Will and hereby constituted shall be "The —— Charity."

2. (a) The investments particulars of which are set out in the Schedule hereto and all other investments from time to time representing the same (hereinafter called "the Trust Fund") shall be vested in the name and custody of the Custodian Trustee as custodian trustee within the meaning and subject

to the provisions of section 4 of the Public Trustee Act 1906 and such provisions shall be deemed to be incorporated in this Trust Deed as if the same were herein expressly set out

(b) The Custodian Trustee shall stand possessed of the Trust Fund and the income thereof for the benefit of the said Charity and the provisions hereinafter set out and contained shall take effect in relation thereto.

3. The objects of the said Charity shall be to apply the net annual income of the Trust Fund in the distribution of gifts of money necessary provisions and comforts to and among such poor and needy persons residing in the township of —— and in such amount and quantity or of such nature as the Managing Trustees shall in their discretion think proper such distribution to be made in the four days preceding Christmas Day in each year.

4. The Managing Trustees shall have the following powers exercisable from time to time as they may think proper namely

(a) To pay all or any part of the expenses necessarily incurred in the administration of the Trust Fund or the application of the net annual income thereof as aforesaid

(b) To accumulate income

(c) To make and vary rules with respect to and otherwise determine the eligibility of beneficiaries of the said Charity

(d) To co-operate with other persons and institutions having objects of a like nature with that of the said Charity

(e) To do all such other lawful acts and things as are necessary or expedient for the proper administration or incidental or conducive to the attainment of the objects of the said Charity.

5. (a) The number of Managing Trustees shall not be less than four who shall be persons residing or carrying on their profession business or other calling in the said township of

---

(b) The Managing Trustees shall meet and otherwise regulate their meetings as they may think fit and three of them shall form a quorum

(c) The Managing Trustees shall keep or cause to be kept full and proper accounts of the application of the net annual

income of the Trust Fund and shall whenever so required deliver the same to the Custodian Trustee.

6. The power of appointing a new or additional Managing Trustee or new or additional Managing Trustees shall be vested in the said AB during his lifetime.

IN WITNESS, *etc.*

THE SCHEDULE ABOVE REFERRED TO

FORM 17

Declaration of Trust to Constitute a "Talmud Torah" (*a*)

Drafted by P. S. A. Rossdale of Lincoln's Inn

THIS DECLARATION OF TRUST made the —— day of —— 19— by AB of *etc.* CD of *etc.* and EF of *etc.* (who are hereinafter called "the Trustees" which expression shall where the context so admits include the survivor or survivors of them or other the trustees or trustee hereof for the time being)

WHEREAS the Trustees have lately constituted themselves trustees for the purposes of the charitable trusts hereinafter mentioned

[AND WHEREAS the said charitable trusts are at the date hereof and are intended hereafter to remain wholly maintained by voluntary contributions (*b*)]

NOW THIS DECLARATION OF TRUST WITNESSETH as follows:—

1. The charity hereby constituted shall be known as ——

——

2. The said charitable trusts are as follows:—

(a) The advancement of the Jewish Religion [in accordance with the orthodox tenets thereof]

(*a*) A Jewish Religious School (for adults or infants). It is a Charity, as being for the advancement of religion (see *Re Michel*, 28 Beav. 39).

(*b*) See s. 62 of the Charitable Trusts Act, 1853.

(b) The provision of facilities for any person or persons for the study of and instruction in Jewish Religious Literature as hereinafter defined in its original Hebrew or Aramaic forms

The expression "Jewish Religious Literature" means the Hebrew Bible the Talmud (both in the Babylonian and in the Jerusalem recensions thereof) and the Codes of Jewish Law together with any of the commentaries on any of the same [and also such other literature similar to the foregoing as the Trustees may from time to time approve (*c*)]

3. (*d*)

FORM 18

Settlement of Income resulting to Settlor under Invalid Provisions of Previous Settlement

THIS SETTLEMENT is made the —— day of —— 19— BETWEEN AB of *etc.* (hereinafter called "the Settlor") of the one part and CD of *etc.* and EF of *etc.* (hereinafter together called "the Trustees") of the other part

WHEREAS:—

(1) This deed is supplemental to a Trust Instrument (hereinafter called "the Principal Deed") dated the —— day of —— 19— and made between the Settlor of the first part GH (therein and hereinafter called "the Mother") of the second part and the Trustees of the third part

(2) Under the provisions of Clause —— of the Principal Deed the property thereby settled (hereinafter called "the said

(*c*) The words in square brackets can be added if the definition is thought unduly narrow without them.

(*d*) The remaining clauses will follow the ordinary common form provisions of a charitable trust deed: conferring powers on the Trustees to deal with and invest the trust property; to conduct the affairs of the trust; and to appoint new trustees by a majority. See, *e.g.*, Vol. 8, Form 7, pp. 282–283.

settled property ") was declared to be held by the Mother upon trust for herself (the Mother) during her life with remainder upon trust for the Settlor during her life with remainder upon trust for the Trustees to stand possessed thereof IN TRUST to accumulate the income thereof by way of compound interest by investing the same and the resulting income thereof from time to time in any investments authorised by law for the investment of trust funds until such time as certain property being number —— —— —— should be sold and upon that event IN TRUST to sell the settled property at the same time as the said property number —— —— —— aforesaid (but so that if such property number —— —— —— aforesaid should be sold during the lifetime of the Settlor then the said trust for sale should become immediate) and to stand possessed of the net proceeds of sale and the income thereof until sale UPON TRUST to pay and divide the same unto and equally between all the grandchildren of the Mother living at the death of the survivor of the Mother her son IJ and the Settlor and being male should attain the age of twenty-one years or being female should attain that age or marry under that age the said grandchildren to take *per capita* and not *per stirpes* and subject to the substitutional gift for the children of deceased grandchildren therein contained

(3) It is apprehended that the said trust for the accumulation of income is void for perpetuity and of no effect and further that in the event of the said property number —— —— —— aforesaid not being sold during the lifetime of the Settlor the said trust for sale will also be void for perpetuity and that accordingly on the death of the survivor of the Mother and the Settlor the settled property will be held upon trust for the grandchildren and remoter issue of the Mother in accordance with the provisions of the Principal Deed but that pending the attainment respectively of such grandchildren and remoter issue of a vested interest in the settled property and subject to the right of a share of income attaching to any and every such vested interest the intermediate income of the settled property is undisposed of and would devolve upon the estate of the Settlor upon a resulting trust

(4) The Settlor is desirous of settling in the manner hereinafter expressed all the interest to which she is or may become entitled in the income of the settled property which shall accrue due after the death of the survivor of the Mother and the Settlor

NOW THIS DEED WITNESSETH AND IT IS HEREBY DECLARED that the Trustees shall from and after the death of the survivor of the Mother and the Settlor stand possessed of the income of the settled property upon trust during the minority of any grandchild or remoter issue of the Mother or until such grandchild or remoter issue shall attain a vested interest in the settled property or in a share thereof under the provisions of the Principal Deed [to accumulate by way of compound interest by investing the same and the resulting income thereof from time to time in any investments authorised by law for the investment of trust funds such part or parts thereof as may for the time being be derived from or attributable to the expectant or presumptive share or interest of such grandchild or remoter issue and to hold the accumulations as an accretion to the capital of such share or interest] *or* [to hold pay or apply the same as if the expectant or presumptive share or interest of such grandchild or remoter issue in the settled property carried the intermediate income and the provisions of section 31 of the Trustee Act 1925 shall apply accordingly]

IN WITNESS, *etc.*

FORM 19

Partition by Co-registered Proprietors amongst themselves of a small Block of Flats under section 28 (3) of the Law of Property Act, 1925

(*Drafted by Ernest H. Scamell of Lincoln's Inn*)

H.M. LAND REGISTRY

LAND REGISTRATION ACTS 1925 and 1936

County: ——
Parish or Place: ——
Property: ——
Transferors' Title No.: ——
Title No. allotted to property hereby transferred: ——

THIS TRANSFER is made the —— day of —— 19— BETWEEN AB of *etc.* and CD of *etc.* (hereinafter together called "the Trustees") of the first part the said AB CD and EF of *etc.* (hereinafter together called "the other flat owners") of the second part and the said —— —— (hereinafter called "the Transferee") of the third part

WHEREAS:—

(1) The Trustees are the survivors of the persons registered at H.M. Land Registry as proprietors with an absolute title of the freehold property comprised in the title above referred to consisting of a building (hereinafter called "the building") comprising three separate flats numbered 1, 2 and 3 respectively and garage accommodation for three cars and also the gardens grounds and boundaries thereof (all of which property is hereinafter referred to as "the said property")

(2) Under and by virtue of the combined effect of the following acts instruments and events namely: (a) the Transfer which led to the registration of the Trustees together with XY

as joint proprietors of the said property (b) a mutual agreement between the Trustees and the said XY (which the Trustees do hereby admit) whereby the Trustees and the said XY did agree to and did in fact sever their joint interests in equity to the intent that they should be and remain entitled in equity as tenants in common in equal shares (c) the death of the said XY intestate on the —— day of —— 19— and the grant of letters of administration of all her estate out of the —— Probate Registry on the —— day of —— 19— to [the said] —— —— the Trustees hold the said property upon the statutory trusts as defined by section 35 of the Law of Property Act 1925 for the benefit of themselves and the said [*administrator of XY*] as such administrator aforesaid as tenants in common in equal shares absolutely

(3) In exercise of the powers for this purpose conferred by subsection (3) of section 28 of the Law of Property Act 1925 the Trustees as such trustees as aforesaid have arranged between themselves and the said [*administrator of XY*] to make a partition of the said property upon such terms and conditions as seem appropriate to the circumstances

(4) For the purpose of giving effect to the said partition and for imposing the said terms so far as regards the property to be taken by the Transferee (being the property described in the First Schedule hereto) the Trustees and the Transferee have agreed to execute this Transfer

(5) This Transfer is of even date and is intended to be executed contemporaneously with two other Transfers in similar form to this Transfer each relating to one of the other flats comprised in the building whereby one such flat is transferred to each of the other flat owners and it is intended that the other flat owners or other the registered proprietor or proprietors for the time being of any such flat or any interest therein may enforce the performance and observance by the Transferee of the covenants and restrictions set forth in the Fourth and Fifth Schedules hereto

Now in pursuance of the said agreement and in exercise of the power conferred by subsection (3) of section 28 of the Law

of Property Act 1925 and of any and every other power them hereunto enabling THIS DEED WITNESSETH as follows:

1. The Trustees as such trustees as aforesaid hereby transfer unto the Transferee ALL THOSE the flat and premises described in the First Schedule hereto (hereinafter called "the said flat") TOGETHER WITH the easements rights and privileges set forth in the Second Schedule hereto subject as therein mentioned EXCEPT AND RESERVING as mentioned in the Third Schedule hereto and ALSO RESERVING out of the said flat to each of the other flat owners respectively in fee simple a perpetual yearly rentcharge of £— in respect of the costs of the maintenance and services hereinafter mentioned to be charged upon and issue out of the said flat and to be paid without any deduction by equal half-yearly instalments on the —— day of —— and the —— day of —— in every year the first of such instalments to be paid on the execution hereof and to be a proportionate amount of the said rentcharge computed from the date hereof to the —— day of —— 19— SUBJECT TO [the restrictive covenants mentioned in the Charges Register of the Trustees' title above referred to so far as the same affect the said flat and are still subsisting and capable of being enforced and to] the covenants and restrictions set forth in the Fourth and Fifth Schedules hereto

2. The following provisions shall have effect in regard to the rentcharges hereby reserved that is to say:

(1) If the amount of any instalment of the said rentcharges or either of them shall be paid to the Agent to be appointed as hereinafter mentioned such payment shall be deemed to have been duly made hereunder and the receipt in writing of the said Agent shall be a sufficient discharge to the Transferee in respect of such payment

(2) The Agent hereinbefore mentioned shall be such person persons or firm as shall be appointed in writing for the purposes hereof jointly by the other flat owners and the Transferee

(3) The duties of the Agent to be so appointed shall be

(a) To collect and give written receipts for the instalments of the said rentcharges and apply the same in discharging the

costs and expenses properly incurred in the execution of his duties herein mentioned

(b) To execute or procure to be executed such of the matters and works referred in the Sixth Schedule hereto as shall from time to time be prescribed by the Transferee and the other flat owners jointly or in default of agreement between them as shall be decided by an independent surveyor to be appointed by the Transferee and the other flat owners jointly and whose decision shall be final and binding upon the Transferee and the other flat owners for all the purposes hereof

(c) To keep proper books of account showing therein the amount of all moneys received and the amount of all moneys expended in connection with his duties hereunder

(d) At the end of every period of five years or on the earlier termination of his employment hereunder to certify in writing to each of them the Transferee and the other flat owners (i) the amount of moneys which he shall have received hereunder and under the provisions of the other Transfers hereinbefore mentioned (ii) the amount of his expenditure (iii) the amount of any balance or deficit having regard to items (i) and (ii) And (iv) the amount likely to be required for executing his duties during the ensuing period of [twelve] months

(e) At the end of every period of five years or on the earlier termination of his employment as hereunder provided to pay to (or as the case may be) collect from the Transferee and the other flat owners in equal shares the amount of any balance or deficit of moneys which shall be possessed or required by the Agent after taking into account the amount required to be retained for the purposes of the item numbered (iv) in the preceding paragraph hereof.

3. The Transferee with the intent to bind so far as may be the said flat and all persons who shall for the time being be the registered proprietor of any estate or interest in or the occupier of the said flat (but save as hereinafter provided not so as to be personally liable under this clause after the Transferee shall have parted with all his estate and interest in the said flat) hereby covenants with the other flat owners for the benefit and

protection of each of their respective flats forming part of the said property and each and every part of such flats that the Transferee shall from time to time and at all times hereafter perform and observe the positive and negative covenants and restrictions contained in the Fourth and Fifth Schedules hereto

4. The Transferee hereby further covenants with the other flat owners that if and when the Transferee shall transfer or create any estate or interest in or part with the possession of the said flat in favour of another person or other persons the Transferee shall procure such other person or persons to enter into a covenant for himself or themselves and his or their successors in title in the terms of the covenants contained in clause 3 hereof and the Fourth and Fifth Schedules hereto (together with the ancillary provisions contained in clause 6 hereof) or as near thereto as the circumstances will admit or require and also a covenant in the terms of this covenant or as near thereto as the circumstances will admit or require which covenants shall be expressed to be for the benefit of and enforceable by the registered proprietor or proprietors for the time being of each of the other two flats respectively or of an estate or interest therein to the intent that such covenants may be enforced directly against such other person or persons aforesaid by the said registered proprietor or proprietors And it is hereby declared that unless and until the provisions of this clause shall be complied with the Transferee shall be and remain personally liable to perform and observe all the covenants on his [her] part herein contained

5. The Trustees and the Transferee hereby apply to the Registrar to enter on the Register affecting the titles of the Transferee:—

(1) such notes or (as the case may require) notices of the rentcharges easements rights privileges exceptions reservations covenants restrictions provisions and rights hereby created granted excepted reserved and imposed as are capable of registration

(2) a restriction in the following form that is to say: "Except under an order of the Court or the Registrar no transfer or lease shall be registered unless such transfer or lease contains

a provision in the following form: "It is hereby certified that the provisions hereof comply with and give effect to all the covenants and provisions contained in a Transfer dated the —— day of —— 19— [*being this Transfer*] and made between *etc.*"

6. In this Transfer where the context so admits the expressions "the Trustees" "the other flat owners" and "the Transferee" shall without prejudice to the operation of sections 78 and 79 of the Law of Property Act 1925 include their respective successors in title and the persons claiming through or under them and where covenants are herein entered into by or with two or more persons such covenants shall be deemed to be by and with such persons jointly and severally

[7. *Certificate of value if required* (*a*)]

In witness, *etc.*

The First Schedule above referred to

Premises included in the flat

(1) The flat or suite of rooms numbered —— and being on the —— floor of the building situate at Number —— —— —— in the County of —— as the same is shown on the plan annexed hereto Together with so much of the building with [the roof] chimney stacks chimneys and flues and drainpipes forming part thereof or attached thereto (severed horizontally) as lies [above the level of the underside of the floor joists of the said flat] [and] [below the level of the underside of the floor joists of the flat immediately above the said flat]

(2) The piece or pieces of garden or open land forming part of the said property as the same are shown coloured [blue] on the said plan

The Second Schedule above referred to

Easements rights and privileges included in the Transfer

1. Such easements and benefits of or in the nature of support and protection from the elements for the said flat or any part

(*a*) Ordinarily, this certificate will not be required, the transaction being a partition.

thereof as are now enjoyed by the same or as are necessary to ensure for the Transferee the right to enjoy such facilities and benefits of or in the nature of support and protection from the elements for the said flat or any part thereof as have hitherto been enjoyed or capable of being enjoyed over or in respect of any other part of the building by reason of the building having been in common ownership

2. The right of free and uninterrupted passage and running of gas electricity water (heated or otherwise) soil smoke fumes to and from the said flat or any part thereof through or from the pipes tanks boilers wires drains conduits flues and chimneys which are now or may at any time hereafter be in under or passing through the building or any part thereof so far as may be reasonably necessary for the comfortable occupation of the said flat

3. The right at all reasonable times and from time to time and with or without workmen and others upon notice (except in case of emergency) to enter upon any part of the building for the purpose of maintaining or decorating the said flat or of inspecting cleansing repairing refuelling renewing and installing so far as may be necessary any such pipes tanks boilers wires drains conduits flues and chimneys as aforesaid causing as little disturbance as possible and making good all damage caused

4. The right (in common with the other flat owners) to use the garage accommodation in the basement of the building for the purpose of garaging one private motor vehicle but not so as to entitle the Transferee to the use of any particular space in the said garage accommodation

5. The right (in common with the other flat owners) at all times to pass and repass with or without a private motor vehicle over and along the driveway shown coloured —— on the said plan for the purpose of using and enjoying the said garage accommodation as aforesaid but for no other purpose

6. The right (in common with the other flat owners other than the flat owner of the ground floor flat) at all times to go pass and repass through and along the staircase leading to the said flat

7. The right (in common with the other flat owners) at all reasonable times to use the forecourt and garden shown on the said plan and thereon coloured [red] for the purpose of recreation only but not for the purpose of playing games or for any other purpose

8. The right (in common with the other flat owners) at all reasonable times to pass and repass over and along the paths and ways coloured [green and brown] respectively for the purpose of gaining access to or leaving the building and the private gardens to the rear of the building respectively but for no other purpose

THE THIRD SCHEDULE ABOVE REFERRED TO

Exceptions and Reservations

1. Easements rights and privileges over along and through the said flat or any part thereof equivalent to those set forth in paragraphs 1 to 8 of the Second Schedule hereto so far as it is necessary to except and reserve the same for the purpose of conferring on the other flat owners in respect of their respective flats easements rights and privileges in similar terms to those contained in the Second Schedule hereto

THE FOURTH SCHEDULE ABOVE REFERRED TO

Positive Obligations

1. Put keep and maintain the interior of the suite of rooms forming part of the said flat and every part thereof in good and substantial repair order and decorative condition

2. Join with the other flat owners in appointing an Agent from time to time for the purposes and upon the terms mentioned in clause 1 of this Transfer

3. Permit the Agent from time to time appointed under the foregoing provisions hereof with or without surveyors workmen and others at all reasonable times on notice (except in case of emergency) to enter into and upon the said flat or any part thereof for the purpose of performing his duties as herein mentioned and of executing or causing to be executed the works and things referred to in the Sixth Schedule hereto

4. Contribute and pay to the Agent aforesaid one equal third part of the amount (if any) by which the costs charges and expenses of the Agent in performing his duties as herein mentioned shall from time to time exceed the revenue of such Agent from the rentcharges respectively payable by the Transferee and the other flat owners in respect of their flats

5. Insure and keep insured the said flat in an Insurance office of repute against all risks other than Fire normal in a householder's comprehensive policy

THE FIFTH SCHEDULE ABOVE REFERRED TO

Restrictions

1. Not to use or occupy the said flat nor permit the same to be used for any purpose whatsoever other than as a private residential flat in the occupation of one family only nor for any purpose from which a nuisance can arise to the other flat owners or the occupiers for the time being of the other flats nor for any illegal or immoral purpose

2. Not to build or erect or cause or permit to be built or erected any building or structure on any part of the land forming part of the said flat (if any) which is now uncovered by any building or structure

3. Not to suffer or permit anything upon the said flat which will or might lessen the support or protection from the elements thereby given to the other flats

4. Not to throw dirt rubbish rags or other refuse or permit the same to be thrown into the sinks bath lavatories cisterns tanks waste or soil pipes or out of the windows of the said flat

5. Not to hang or expose washing or any clothes or materials on any part of the said flat so as to be visible from outside the said flat

6. Not to do or permit to be done any act or thing which may render void or voidable any policy of insurance on the said building or cause an increased premium to be payable in respect thereof

THE SIXTH SCHEDULE ABOVE REFERRED TO

Works and things to be undertaken by an Appointed Agent

1. Put keep and maintain the structure of the building and all the garden or open land forming part of the said property other than the land shown coloured [blue] on the said plan annexed hereto in good substantial repair order and condition as respects structural condition and decoration of the exterior of the building and (in the case of garden land) as respects cultivation and tidiness and without prejudice to the generality of the foregoing (a) keep and maintain in good condition and state of cleanliness all concrete and other paths drives and ways which are now or may at any time hereafter be situate upon any part of the said property and (b) keep and maintain the exterior wood and ironwork properly painted in a paint or paints of such colour or colours as the Transferee and the other flat owners may jointly determine and failing such determination in the like colour or colours as those last before used or as near thereto as possible

2. Insure and keep insured the building in the joint names of the Transferee and the other flat owners against loss or damage by fire to the full value thereof in an Insurance Office of repute approved by the Transferee and the other flat owners and in the event of any moneys being received under or in respect of such insurance such moneys shall as soon as reasonably practicable be laid out in the repair rebuilding or re-instatement of the building [and in case such moneys shall be insufficient for such purpose the deficiency shall be made good by the Transferee and the other flat owners in equal shares]

3. Provide for the running and maintenance of the boiler situated in the basement of the building in accordance with the joint instructions of the Transferee and the other flat owners

FORM 20

Condition of Sale making an Assent to trustees for sale conclusive evidence thereof (*a*)

(*Drafted by Peter Elman of the Middle Temple*)

The property is vested in the Vendors under and by virtue of an Assent dated —— —— 19— and made by —— —— upon the trusts for sale therein contained The Purchaser shall be bound to assume (as is the case) that the Vendors were entitled to have the property vested in them by such Assent upon such trusts for sale and that every statement of fact contained in such Assent is correct and shall raise no requisition or objection whatsoever in relation thereto

FORM 21

Surrender and Release by a Tenant for Life in Remainder of his Interest (*b*)

(*Drafted by Peter Elman of the Middle Temple*)

THIS DEED OF RELEASE AND SURRENDER is made the —— day of —— 19— BETWEEN AB of *etc. and* CD of *etc.* (hereinafter

(*a*) Whilst an assent or conveyance to statutory owners or a tenant for life is to be taken as conclusive evidence of the fact that the persons or person in whom the land was thereby declared to be vested were the proper persons or person in whom the same ought to be vested (s. 110 (2) and s. 5 (1) (b) of the Settled Land Act, 1925), there is no corresponding provision in respect of an assent or conveyance to trustees for sale. Accordingly, apart from express provision, the "sufficient evidence" provisions of s. 36 (7) of the Administration of Estates Act, 1925, would be all that would be applicable, and troublesome requisitions and inquiries might well be made by the purchaser.

(*b*) The above Form will not affect the liability (if any) for estate duty which may arise on the death of the original settlor (see s. 38 (8) of the Finance Act, 1957). Since (see Recital 4) the interest of the above-named Life Tenants has not yet come into possession, s. 43 of the Finance

called "the Life-Tenants") of the one part and EF of *etc.* and GH of *etc.* (hereinafter called "the Trustees") of the other part

WHEREAS:—

(1) This Deed is supplemental to a Settlement dated the —— day of —— 19— and made between XY of the one part and the Trustees of other part

(2) By the said Settlement the said XY directed the Trustees to stand possessed of the sum of £— then previously paid and all moneys and investments thereafter to be paid or transferred to and accepted by the Trustees and the investments for the time being representing the same (therein and hereinafter called "the Trust Fund") upon trust to pay the income thereof to TL during his lifetime and after the death of the said TL upon trust to pay the income thereof to the Life Tenants or the survivor of them and after the death of the survivor of the Life Tenants upon the other trusts therein set out

(3) The Trust Fund is now represented by the investments particulars of which are set out in the Schedule hereto

(4) The life interest of the Life Tenants in the Trust Fund has not at the date hereof become an interest in possession

(5) The Life Tenants and each of them desire to release and surrender their his and her life interest in the Trust Fund in manner hereinafter appearing

NOW THIS DEED made in pursuance of and for effectuating the said desire WITNESSETH that the Life Tenants do and each of them does hereby release and surrender unto the Trustees their his and her life interests in the Trust Fund and all other if any the property now or which may hereafter become subject to the trusts of the said Settlement to the intent that the said life interests shall forthwith be absolutely extinguished and merged in the capital of the Trust Fund and other property aforesaid and that the Trustees shall henceforth

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Act, 1940 (as amended by s. 43 of the Finance Act, 1950), dealing with the termination of life interests, does not apply and no estate duty will be payable on the deaths of either of the Life Tenants.

stand possessed of the Trust Fund and other property aforesaid upon the trusts declared and contained in the said Settlement free from such life interests or any of them

IN WITNESS, *etc.*

THE SCHEDULE ABOVE REFERRED TO

FORM 22

Mortgage of shares providing for Principal Moneys to be repaid by instalments

THIS MORTGAGE is made the —— day of —— 19— BETWEEN AB of *etc.* CD of *etc.* and EF of *etc.* (hereinafter together called "the Borrowers" which expression where the context admits shall include the respective executors administrators and assigns of the Borrowers) of the one part and XY of *etc.* (hereinafter called "the Mortgagee" which expression shall where the context admits include his executors administrators and assigns of the other part

WHEREAS:—

(i) The Borrowers are between them entitled to the shares whereof short particulars are set out in the Schedule hereto

(ii) The Mortgagee has agreed with the Borrowers to lend to them the sum of £— upon having the repayment thereof with (in certain events as hereinafter provided) interest thereon at the rate hereinafter mentioned secured in the manner hereinafter appearing

(iii) It was part of the said agreement that the Borrowers should deposit and pursuant to the said agreement the Borrowers have deposited with the Mortgagee the certificates of the said shares specified in the Schedule hereto together with transfers in blank of such shares

NOW THIS DEED made in pursuance of the said agreement and in consideration of the sum of £— now paid to the Borrowers

by the Mortgagee (the receipt whereof the Borrowers hereby jointly and severally acknowledge) WITNESSETH as follows:—

1. The Borrowers hereby jointly and severally covenant with the Mortgagee to pay the said sum of £— by the instalments at the times and in manner following that is to say by —— equal quarterly instalments of £— each whereof the first is to be paid on the execution of this Deed and a like instalment on every subsequent day of —— and —— day of —— and —— day of —— and —— day of —— until the said principal sum of £— shall be fully paid AND FURTHER that if at any time any one of the said instalments or any part thereof shall be in arrear and unpaid for the period of —— days after the time hereinbefore appointed for the payment thereof or if at any time before the whole of the said principal sum of £— shall have been paid to the Mortgagee any one of the events following shall occur namely the Company —— Limited referred to in the Schedule hereto shall commence to be wound up either by means of a voluntary liquidation or by a Court of competent jurisdiction then and in any such case the whole of the principal money which shall for the time being remain unpaid to the Mortgagee shall forthwith become payable and shall be paid with interest (which the Borrowers hereof jointly and severally covenant with the Mortgagee to pay) at the rate of £—— per cent. per annum (such interest to commence to run on and as from the date upon which the principal money for the time being remaining unpaid shall become forthwith payable under and pursuant to the foregoing provisions) by the Borrowers to the Mortgagee on demand AND IT IS HEREBY DECLARED a mere statement in writing by the Mortgagee that the same has become due as aforesaid shall in favour of any purchaser or other person dealing with the Mortgagee not having actual notice to the contrary be conclusive evidence for all purposes of the truth thereof

2. The Borrowers do and each of them according to his beneficial interest in the said shares specified in the First Schedule

hereto doth hereby charge ALL those shares specified in the Schedule hereto with the repayment and payment to the Mortgagee of the principal moneys and interest hereinbefore covenanted to be paid by the Borrowers to the Mortgagee PROVIDED ALWAYS that if the Borrowers shall pay to the Mortgagee the said principal sum of £— together with interest (if any) thereon or on the unpaid part thereof for the time being in the meantime by the instalments at the times at the rate and in manner hereinbefore contained then and in such case the Mortgagee shall retransfer to the Borrowers such (if any) of the shares specified in the Schedule hereto as shall have been transferred into the name of the Mortgagee and deliver up to the Borrowers such of the said transfers in blank as shall not have been completed and the certificates relating to the said shares

3. IT IS HEREBY AGREED AND DECLARED as follows:—

(1) That the Mortgagee may as well before as after the said transfers of the said shares specified in the Schedule hereto shall have been completed and registered receive all dividends and bonuses becoming due thereon

(2) That the Mortgagee may at any time after the principal moneys hereby convenanted to be paid to the Mortgagee or the balance thereof for the time being remaining unpaid shall have become due and payable to the Mortgagee by writing under his hand appoint such person as he thinks fit to be receiver of all or any dividends declared and payable in respect of the shares specified in the Schedule hereto or any of them and that any receiver so appointed shall be deemed to be the agent of the Borrowers who shall be solely responsible for his acts or default and further all the provisions of the Law of Property Act 1925 relating to receivers appointed by mortgagees including the provisions of section 109 of the said Act (other than those of subsection (1) of section 109 aforesaid) shall apply to and be applicable with respect to any receiver appointed by the Mortgagee in exercise of the powers in that behalf conferred upon the Mortgagee

(3) That the Mortgagee may insert his own name or the name of any purchaser under the power of sale hereby conferred in all or any of the said transfers in blank and may in the names or name of the Borrowers or either of them sign seal and deliver all or any of the said transfers in blank and may cause any such transfer to be registered

(4) That the Borrowers will if required by the Mortgagee permit all or any of the shares specified in the Schedule hereto to be re-vested in the Borrowers or either of them in such manner as the Mortgagee shall think fit

(5) That the Borrowers will indemnify the Mortgagee against all costs and liabilities which may be incurred or sustained in respect of any of the shares specified in the Schedule hereto

(6) That all costs charges and expenses properly incurred hereunder by the Mortgagee and all moneys properly paid by the Mortgagee shall together with interest thereon at the rate of £— per cent. per annum be charged on the shares specified in the Schedule hereto and shall on the same being paid be repaid on demand to the Mortgagee by the Borrowers with interest thereon from the time of payment at the rate aforesaid Provided that the charge hereby conferred shall be in addition and without prejudice to any and every other remedy lien or security which the Mortgagee may or but for the said charge would have for the moneys thereby secured or any part thereof

IN WITNESS, *etc.*

THE SCHEDULE ABOVE REFERRED TO

FORM 23

Form for providing Collateral Security for payment of Rent by a Company under a Lease where the continued ability of the Company to pay rent depends upon the continued life of a particular person, e.g., the Managing Director of the Company

(Drafted by Ernest H. Scamell of Lincoln's Inn)

THIS ASSIGNMENT AND DECLARATION OF TRUST is made the —— day of —— 19— BETWEEN *AB Co. Ltd.* whose registered office is situate at *etc.* (hereinafter called "the Assignors") of the first part CD of *etc.* (hereinafter called "Mr. CD") of the second part and EF Co. Ltd. whose registered office is situate at *etc.* (hereinafter called "the Company") of the third part

WHEREAS:—

(1) In this deed the expression "the said Lease" shall include the Lease referred to in the next following recital hereof and any substitution therefor or variation thereof which may from time to time or at any time hereafter be made

(2) By a Lease of even date herewith and made between the Company of the first part Mr. CD of the second part and the Assignors of the third part the Company demised and granted unto the Assignors the property in the said Lease more particularly described for the term of —— years from the —— day of —— 19— at a rent of £—— per annum and subject to the covenants on the part of the Assignors and of Mr. CD and the conditions therein contained

(3) The said Lease contains a covenant by the Assignors with the Company that the Assignors would pay the said rent thereby reserved on the days and in the manner therein mentioned and would perform and observe all the tenants' covenants therein contained (all of which covenants are hereinafter called "the Assignors' Covenants")

(4) The said Lease also contains a covenant by Mr. CD with the Company that the Assignors would pay the rent thereby reserved on the days and in the manner therein mentioned and would perform and observe all the Assignors' Covenants and that in the event of default of CD such payments of rent or in performance or observance of any such covenants Mr. CD would pay and make good to the Company on demand all losses damages costs and expenses thereby arising or incurred by the Company (which covenant is hereinafter called "Mr. CD's Covenant")

(5) The Assignors are absolutely and beneficially entitled (free from incumbrances) to the policy of assurance numbered —— —— (hereinafter called "the said Policy") effected in the Assignors' name in the offices of the —— —— Society to secure payment in the event of the death of Mr. CD within the term of —— years from the date of the said Policy of the sum of £—— and under the annual premium of £——

(6) It was a term of the agreement for the said Lease that the Assignors should secure the performance and observance of the Assignors' Covenants in the event of the death of Mr. CD in the manner hereinafter appearing

Now in pursuance of the said term of the said agreement and in consideration of the premises THIS DEED WITNESSETH as follows:—

1. The Assignors as Beneficial Owners hereby assign unto the Company ALL THAT the said Policy and the said sum of £—— thereby secured and all bonuses additions and moneys to become payable under the said Policy and the full benefit thereof Together with all powers and remedies for recovering and obtaining payment of all or any of the said moneys TO HOLD the same unto the Company absolutely subject nevertheless to the proviso for redemption hereinafter contained

2. PROVIDED ALWAYS that if and when the said Lease shall determine or be determined (whether by effluxion of time or otherwise) and the Assignors and Mr. CD shall have performed and observed in all respects the Assignors' Covenants and Mr. CD's Covenants respectively and all moneys payable or to become

payable under this deed shall have been paid or discharged then and in such case the premises hereinbefore assured shall at the request and cost of the Assignors be duly reassured and the provisions of this deed shall thenceforth determine and cease to have effect

3. (1) In the event of the death of Mr. CD during the said term of the said Policy and during the continuance of this deed the Company may receive all or any of the said moneys which may become payable under the said Policy and upon receiving the same the Company shall stand possessed thereof UPON TRUST at the Company's discretion to invest or apply the same in the name or under the legal control of the Company in the purchase of or at interest upon the security of such stocks funds shares securities or other investments or property of whatsoever nature and wheresoever and whether involving liability or not or upon such personal credit with or without security as the Company shall in its absolute discretion think fit

(2) In favour of the said —— —— —— —— Society the possession by the Company of the said Policy and of this deed shall be conclusive evidence of the right of the Company to receive and give a good discharge for the said policy moneys

4. The Company shall stand possessed of the said policy moneys and the property for the time being representing the same (hereinafter called "the Trust Fund") upon trust to pay or apply the capital and income thereof as follows:—

(1) In payment of all costs charges and expenses incurred and moneys paid by the Company under this deed in the exercise of the powers herein contained or generally in the administration of the trusts hereof and subject thereto

(2) In payment to Mr. CD's personal representatives of such a sum as shall be equal to the difference in the amount of estate duty (if any) which would be payable on Mr. CD's death in respect of his estate if the said Policy or any interest therein did not form part of such estate and the amount actually payable in respect of such estate including the said Policy or any interest therein Provided that the amount payable by the Company under this paragraph shall not exceed the sum of £——

(3) In payment to the Company (for its own benefit absolutely) of all moneys which under the provisions of this deed the Company is entitled to receive out of the Trust Fund

(4) If and as often as there shall be any surplus income arising from the Trust Fund the same shall (so far as the law allows) be accumulated and invested or applied in the manner hereinbefore mentioned and shall be held as an accretion to the Trust Fund and the provisions of this deed shall apply thereto accordingly

(5) Subject as aforesaid for the Assignors absolutely

5. The trusts powers and provisions declared and contained in the last preceding clause hereof shall only be and remain operative for the shorter of the two periods following namely (i) the continuance of this deed or (ii) a period of 21 years from the death of Mr. CD and upon the determination of the said trusts powers and provisions under this provision the Company shall hold the Trust Fund and the income thereof upon trust for the Assignors absolutely

6. If and as soon as the trusts of the Trust Fund hereinbefore declared shall become operative the personal representatives of Mr. CD shall have power at any time thereafter and from time to time to appoint one additional trustee to act jointly with the Company for all purposes in the administration of the said trusts and upon such additional trustee being so appointed references in the three preceding clauses hereof to "the Company" shall where the context so admits or requires be read and construed as references to the Company and such additional trustee together and where pronouns appear they shall be read and construed accordingly

7. (1) If and as often as the Assignors shall make default in the payment to the Company of any sum of money which shall become payable under the Assignors' Covenants (whether as rent or as damages for breach of any covenant or otherwise) or under the covenant on the part of the Assignors contained in the next following clause hereof then the Company shall be entitled to receive payment of the amount of such sum in full out of the Trust Fund

(2) For the purposes of paragraph (1) of this clause the Assignors shall not be deemed to have made default under the Assignors' Covenants unless at the time of any breach the Assignors shall have entered into liquidation or the directors for the time being of the Company shall bona fide believe that the Assignors are insolvent and either

(i) the default is in respect of non payment of rent and the Assignors shall have failed to pay in full any rent due for a period of [21] days after a demand in writing made in that behalf shall have been served upon the Assignors in accordance with the provisions of section 196 of the Law of Property Act 1925 or

(ii) The default is in respect of the non performance or non observance of the provisions of one or more of the Assignors' Covenants (other than the covenant to pay rent) and the amount of damages due to the Company as a result thereof is either agreed in writing between the Assignors and the Company or is determined by judicial proceedings or by arbitration under the provisions contained in the said Lease in that behalf

(3) Where the Company has become immediately entitled or subject to the satisfaction of the conditions specified in the preceding paragraph of this clause would become immediately entitled to receive payment of any sum out of the Trust Fund in respect of any default by the Assignors under the Assignors' Covenants then notwithstanding the provisions of Mr. CD's Covenant the Company shall not be entitled to enforce Mr. CD's Covenant against his personal representatives unless and until the whole of the Trust Fund shall be exhausted and satisfaction to the Company under the provisions of this deed in respect of any such default as aforesaid shall *pro tanto* discharge Mr. CD's personal representatives from liability under Mr. CD's Covenant

8. The Assignors hereby covenant with the Company as follows:—

(1) That the said Policy is not void or voidable but is valid and subsisting and that the said Policy and any new policy to be effected under the provisions hereinafter contained shall not

become void or voidable and that the Assignors will not do or suffer anything whereby the Company may be prevented from receiving the moneys to become payable under any such policy or any part thereof

(2) That if the said Policy or any such new policy as aforesaid has or shall become voidable the Assignors will at their own cost do all things necessary for restoring or keeping the same on foot and that if any such policy has or shall become void the Assignors will immediately at their own cost effect and deliver to the Company or enable the Company to effect a new policy or policies on the life of Mr. CD for the like term and to secure the like amount as those provided for under the void policy

(3) That every new policy effected under the provisions of the preceding paragraphs of this clause and the moneys to become payable thereunder shall be and become subject to the provisions of this deed as fully in all respects as the said Policy and policy moneys

(4) That the Assignors will during the continuance of this deed duly and punctually pay to the —— Society the amount of the annual premium and other moneys (if any) necessary for keeping the said Policy and every such new policy as aforesaid on foot

(5) That if Mr. CD shall at any time during the continuance of this deed go beyond the limits of operation (if any) of the said policy or any such new policy as aforesaid or subject his life to any extraordinary risk or risks not covered by any such policy or if the Company shall receive notice or shall have reasonable grounds for believing that Mr. CD is intending so to do then and in any such case the Company may without any further consent on the part of the Assignors pay any extra premium payable on any such policy for covering any increased risk or may surrender by way of exchange or otherwise for valuable consideration any such policy and may accept in exchange or otherwise effect any other policy on the life of Mr. CD in such office for such sum and at such premium and generally subject to such provisions as the Company may deem

expedient and all costs and sums incurred and expended by the Company in acting as aforesaid shall on demand be paid by the Assignors to the Company

9. Mr. CD hereby covenants with the Company that he will before he goes beyond the limits of operation (if any) of the said Policy or any such new policy as aforesaid give notice in writing to the Company of his intention so to do

10. Proper books of account shall be kept by the Company (or the trustees hereof for the time being) in regard to the administration of the trusts hereinbefore declared and entries made therein of all such matters transactions and things as are usually or ought to be entered in books of account kept by trustees and the said books of account and all letters papers and documents relating to the administration of the said trusts shall be kept at the registered office of the Company and the parties hereto and the personal representatives of Mr. CD shall at all reasonable times have free access either personally or through agents to examine and copy the same

11. (1) The Company shall be entitled to charge and to be paid all proper charges for business transacted time expended and acts done by the Company in connection with the administration of the trusts hereof including matters which might or should have been attended to in person by a trustee not being a solicitor or other person engaged in any profession or business

(2) Any trustee for the time being hereof being a solicitor or other person engaged in any profession or business shall be entitled to charge retain and be paid all usual professional or other charges for business done by him or his firm in relation to the administration of the trusts hereof and also his reasonable charges in addition to disbursements for all other work and business done and all time spent by him or his firm in connection with matters arising in the premises including matters which might or should have been attended to in person by a trustee not being a solicitor or other person so engaged

IN WITNESS, *etc.*

FORM 24

Agreement for enabling a Trader to obtain Finance by the assignment of existing Book Debts, with collateral provisions

THIS AGREEMENT under seal is made the ——day of —— 19— BETWEEN —— of —— [whose registered office is situate at ——] in the County of —— (hereinafter called "the Vendor") of the first part [and] —— Limited whose registered office is situate at —— in the County of —— (hereinafter called "the Purchaser") of the second part [and —— of —— in the County of —— and —— of —— in the County of —— (hereinafter called "the Guarantors") of the third part]

WHEREAS:—

(1) The Vendor has for some time past carried on at —— in the County of —— the [wholesale] business of (*inter alia*) selling —— to his [its] (trade) customers on terms of monthly credit

(2) In connection with the said business and in consequence of such sales the Vendor has become entitled to the book debts particulars whereof are set forth in the Schedule hereto and in respect whereof payments from the Vendor's said customers amounting to the totals set out in the said Schedule will become due to the Vendor on the dates therein mentioned

(3) The Vendor has agreed with the Purchaser for the absolute sale and assignment to the Purchaser of the benefit of all the said book debts and the moneys due or to become due from the said customers in respect thereof for the sum of £——

(4) For the purpose of facilitating the collection by the Purchaser of the moneys due and to become due in respect of the said book debts and for avoiding the necessity of serving any immediate notice of this assignment on the said customers it has been further agreed that the Vendor shall collect or receive the same in accordance with the provisions hereinafter contained

(5) In order to ensure the punctual payment by the said customers of the said moneys now due or henceforth to become

due and also to ensure the punctual remittance thereof to the Purchaser the Vendor has further agreed with the Purchaser to give the Purchaser such Bills of Exchange as are hereinafter mentioned

(6) For the purpose of guaranteeing the several warranties and of securing the due performance of the several obligations on the part of the Vendor hereinafter contained the Guarantors have agreed to join in this deed in the manner hereinafter appearing

Now in pursuance of the said several agreements and in consideration of the sum of £—— now paid by the Purchaser to the Vendor (the receipt whereof the Vendor hereby acknowledges) [and of the covenants on the part of the Guarantors hereinafter contained] THIS DEED WITNESSETH as follows:—

1. The Vendor as beneficial owner hereby assigns unto the Purchaser all the book debts and other moneys and claims set forth in the Schedule hereto and all securities or guarantees held by the Vendor in respect thereof TO HOLD the same unto the Purchaser absolutely

2. The Vendor [and the Guarantors and each of them jointly and severally] hereby represent[s] and warrant[s] to the Purchaser as follows:—

(1) Each and every debt set forth in the Schedule hereto is a bona fide debt arising out of the sale and delivery of property or the performance of services or both such sale and delivery and performance by the Vendor during the regular course of his [its] said business

(2) Each of the debtors named in the said Schedule is actually indebted to the Vendor in the amount set forth in respect of the goods or services therein stated.

(3) Where it is stated in the said Schedule that the due date for payment of any such debt has not yet been reached the due date therein stated is correct and where no due date is stated the debt is immediately due and payable

(4) Save as stated in the said Schedule none of the said debts is dependent for its payment upon the performance of any contract or the happening of any condition or event

(5) Save as stated in the said Schedule none of the said debts is susceptible of any defence set-off or counterclaim of any kind whatsoever

(6) Save as otherwise stated in the said Schedule, the Vendor does not hold any collateral security or guarantee securing or evidencing any of the said debts

3. For the period and upon and subject to the terms hereinafter mentioned the Purchaser hereby appoints the Vendor and the Vendor hereby undertakes at his own expense to act as the agent of the Purchaser for the purpose of collecting receiving and giving receipts for all or any of the said debts and claims hereby assigned and to remit to the Purchaser all moneys so collected or received by the Vendor and it is hereby declared that immediately upon receipt and pending the remission thereof to the Purchaser the Vendor shall hold all such moneys as a trustee for the Vendor

4. Upon the execution hereof the Vendor shall forthwith deliver to the Purchaser a bill of exchange or (at the option of the Purchaser) a promissory note of even date herewith drawn by the Vendor [and the Guarantors] in favour of the Purchaser and providing for the payment to the Purchaser or to the Purchaser's order within 27 days from such date of such a sum as shall be equal to the total amount due or to become due in respect of the debts set forth in the Schedule hereto Provided and it is hereby agreed that the liability of the Vendor in respect of such bill of exchange or promissory note shall extend only to such a sum as shall be equal to the total amount for the time being remaining unpaid of the debts hereby assigned and Provided further that upon receipt by the Purchaser hereunder of a total sum equal to the total amount due or to become due in respect of the said debts the said bill of exchange or promissory note shall be delivered up to the Vendor and the Vendor shall thereafter have and be entitled to exercise for his [its] own benefit the same rights and remedies in respect of such (if any) of the said debts as shall then remain outstanding

5. The Purchaser hereby covenants with the Vendor that unless and until one or more of the events specified in clause 7

hereof shall occur the Purchaser will not take any active step to give notice of this assignment to any of the debtors whose debts are hereby assigned

6. The Vendor [and the Guarantors and each of them jointly and severally] hereby covenant[s] with the Purchaser that so long as any obligation arising hereunder (other than this clause) remains to be performed or observed the Vendor will not save in accordance with the provisions hereof:—

(1) do or suffer to be done any act or thing which would cause all or any of the representations contained in clause 2 hereof to be or become untrue

(2) assign charge or otherwise deal with any of the debts hereby assigned or make any attempt thereat

7. If the Vendor [or Guarantors] shall make permit or suffer any default in honouring to the extent hereinbefore provided any bill of exchange or promissory note made in accordance with the provisions of clause 4 hereof or shall at any time fail or neglect to perform or observe any of the covenants conditions or agreements herein contained and on his [its] [their] part to be performed and observed or if the Vendor shall become bankrupt or have a receiving order made against him or enter into any arrangement or composition for the benefit of his creditors or being a company shall enter into liquidation whether compulsory or voluntary (not being a voluntary liquidation for the purpose of amalgamation or reconstruction) then and in any such case the following provisions shall effect:—

(1) The covenant on the part of the Purchaser contained in clause 5 hereof shall cease to have effect and the Purchaser may thereupon serve notice of this assignment upon the said debtors accordingly

(2) The Vendor shall deliver to the Purchaser all invoices trade acceptances books and all other documents of any kind in his [its] possession or control which may relate to or be evidence of any of the book debts set forth in the Schedule hereto

(3) If and to the extent necessary to enable the Purchaser to recover in his own name the amount of the said debts from

the persons liable the Purchaser shall become the agent of the Vendor for the purpose of collecting receiving compromising or discharging all or any of the said debts and the provisions of this deed shall apply to the moneys so collected or received

(4) The agency created by the provisions of clause 3 hereof shall determine but without prejudice to the trust therein declared of moneys then received or which may thereafter be received by the Vendor

8. Where there are two or more persons included in the expression "the Vendor" then covenants expressed to be made by the Vendor shall be deemed to be made by such persons jointly and severally

9. It is hereby certified that the transaction hereby effected does not form part of a larger transaction or of a series of transactions in respect of which the amount or value or the aggregate amount or value of the consideration exceeds £——

IN WITNESS, *etc.*

THE SCHEDULE ABOVE REFERRED TO

Invoice No.	Name and address of Customer	Description of goods or services supplied	Invoice sum	Date payable
		Total		

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EDITORS

MAGAZINE:
EDWARD F. GEORGE, LL.B.,
Solicitor of the Supreme Court

PRECEDENTS:
ERNEST H. SCAMELL, LL.M.,
of Lincoln's Inn, Barrister-at-Law

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